

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4324
(Summary Calendar)

MARCUS D. MITCHELL,

Plaintiff-Appellant,

versus

LAMAR COUNTY JAIL,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(3:92cv27)

(September 27, 1993)

Before JOLLY, WIENER and EMILIO. M. GARZA, Circuit Judges.

PER CURIAM:*

In this prisoner's civil rights case under 42 U.S.C. § 1983, the district court dismissed the complaint of Plaintiff-Appellant Marcus D. Mitchell against Defendant-Appellee Lamar County Jail (the Jail). The district court not only found that the Jail was not a legal entity amenable to suit but also found meritless

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mitchell's complaint that he was deprived of adequate medical treatment. Mitchell appeals those rulings as well as the district court's denial of Mitchell's motion for leave to amend his complaint. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

Mitchell was arrested on August 25, 1991, by the Paris (Texas) Police Department and charged with attempted murder. The next day he was transferred to the Jail pending trial. Upon his arrival at the Jail, Mitchell informed cognizant personnel that he was taking seven different medicines. He was seen by the jail physician, Dr. Scott, on August 28, 1991. Dr. Scott then prescribed for Mitchell three of the medications he was already taking SOMotrin, Thorazine and Prilosec. On September 11 the doctor prescribed a fourth medication SOValium. Dr. Scott saw or prescribed medications for Mitchell nine times thereafter. Mitchell was also treated by outside physicians on at least three occasions while he was in the Jail. Personnel of the Jail administered daily all medications prescribed for Mitchell by the attending physicians.

Mitchell was tried and convicted of attempted murder in October, and was sentenced on November 11, 1991. He received his last medications at the Jail on December 16, 1991, the day he was transferred to the Greenville Jail, where he received no medication. The next day Mitchell was transferred from the Greenville Jail to the Texas Department of Criminal Justice, Institutional Division.

In his civil rights complaint Mitchell named the Jail as the sole defendant. He alleged that he was entitled to relief on grounds that he was denied medical treatment and that he did not receive all of the medications that had been prescribed for him prior to his detention at the Jail. He attached a copy of an inmate grievance wherein he complained that Dr. Scott had not prescribed Prozac for him.

Mitchell moved to amend his complaint to allege denial of treatment for his unspecified "serious medical needs" by the staff of the Jail. He did not, however, seek to name any additional defendants. The magistrate judge denied the motion.

Subsequently, at Mitchell's Spears hearing, the parties consented to have the case disposed of by a magistrate judge. An attorney appeared on behalf of Lamar County. Another attorney from the same firm later moved to dismiss the action on the ground that the Jail was not an entity amenable to suit. Mitchell filed a response to that motion, asserting that he should have named as defendants Lamar County and Sheriff John Cook, who apparently is the sheriff of Hunt County. Mitchell testified at the Spears hearing, as did the Jail's chief jailer who introduced Mitchell's jail medical records.

The district court dismissed Mitchell's action with prejudice, stating its reasons in a memorandum opinion. The court held that the Jail was not a separate legal entity amenable to suit, noting that in Texas sheriffs are responsible for the county jail. The court found that when Mitchell "was confined in the jail, he was a

pretrial detainee." The court held that "even if [Mitchell] were allowed to amend his complaint, the medical claims against the Sheriff and County should be dismissed because they lack any arguable basis in law and, as such, are frivolous." The court did not mention that in his response Mitchell asserted that he should have named Hunt County Sheriff Cook, not Lamar County Sheriff Burns, as a defendant.

II

ANALYSIS

A.

The district court correctly held that the Jail is not a legal entity subject to suit. See Wright v. El Paso County Jail, 642 F.2d 134, 136 n.3 (5th Cir. Unit A 1981). In Wright, we noted further that "it may be appropriate on remand . . . to allow the plaintiff to amend his complaint to change the defendant El Paso County Jail to El Paso County and to name the `responsible parties.'" Id. Remand would not be appropriate in the instant case, however, because, as shown by his medical records and as found by the district court, Mitchell did in fact receive reasonable medical care.

B.

Mitchell was a pretrial detainee in the Jail from August 26, 1991, until the time in October 1991, when he was convicted. He was sentenced November 11, 1991. Thus, he is only partially correct in asserting that he "was a pretrial detainee at the Lamar County Jail at the time of the incidents giving rise to his suit."

"[P]retrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective." Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987). In contrast, for a convicted prisoner to be entitled to relief under § 1983 on grounds of denial of medical care, he must show that there was "deliberate indifference to [his] serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). To prove deliberate indifference, a prisoner must show that there were wanton actions, or failures to act, relative to his serious medical needs. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985).

The denial of access to medical personnel capable of evaluating the need for treatment, or the denial of recommended treatment, of an inmate's serious medical needs may constitute deliberate indifference. West v. Keve, 571 F.2d 158, 162 (3d Cir. 1978); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 763 (3d Cir. 1979). But a disagreement between an inmate and his physician as to whether medical care was appropriate is not actionable under § 1983 in the absence of exceptional circumstances. Wright v. Collins, 766 F.2d 841, 849 (4th Cir. 1985). Adequate medical-record evidence of sick calls, examinations, diagnoses, and medications may rebut allegations of deliberate indifference. See Mendoza v. Lynaugh, 989 F.2d 191, 193 (5th Cir. 1993).

Mitchell's principal complaint seems to be that he was not allowed by Dr. Scott to continue taking all of the medications that

were being taken prior to arrest. Dr. Scott did, however, prescribe the medications Mitchell mentions in his briefs: Prilosec, Valium, and Thorazine as well as Motrin.

Mitchell states that on December 1, 1991, he blacked out, re-injured his back, and had to be taken to St. Joseph's Hospital. He states further that he "was treated at the hospital by Dr. White and was returned to the jail." Mitchell does not complain of the treatment he received or failed to receive, much less argue that there was "deliberate indifference."

Mitchell also asserts that "[o]n December 15, 1991, [he] filed an Inmate Grievance hoping to get medical attention because of shortness of breath, throwing up fluids and blood, and constant hiccuping." The medical records show that Dr. Scott wrote: "OK with me for him to see stomach specialist." But as Mitchell was transferred to Greenville City Jail the next day, he was not seen by such a specialist in or from the Jail.

Mitchell complains that when, during the one day he spent at Greenville City Jail before going to a TDCJ unit, he asserted that he needed his medications he was told by Officer David Wall and Hunt County Sheriff Cook that he (Mitchell) "would just have to suffer." Mitchell has not alleged, however, that there were any adverse effects or that he did not receive his medications when he arrived at the TDCJ unit the next day (December 17, 1991). The medical records show that, except for Thorazine, Mitchell received his medications at the Jail on the morning of December 17, 1991. He did not receive Thorazine that day because he was taking

Thorazine at bedtime. At most, this is an allegation of negligence, which is not actionable under § 1983. After Mitchell left the Jail, its personnel had no duty to supply him with medications; and he was not in the jail at Greenville long enough to have medication prescribed for him by its physician. See Daniels v. Williams, 474 U.S. 327, 328, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986); Mendoza, 989 F.2d at 193 (no showing of "substantial harm").

Mitchell's medical records amply demonstrate that he received reasonable medical care while he was an inmate of the Jail, both as a detainee before he was convicted of attempted murder, and as a convicted prisoner thereafter. Accordingly, the district court did not err by dismissing his action with prejudice. See Thomas v. Kippermann, 846 F.2d 1009, 1011 (5th Cir. 1988).

C.

Mitchell contends that the district court committed reversible error in denying his motion to amend his complaint. He insists that under Fed. R. Civ. P. 15(a) he was entitled to amend his complaint as a matter of right because no defendant had filed a responsive pleading before he filed his motion. Rule 15(a) so provides, but even so the district court's ruling did not prejudice Mitchell because the requested amendment alleged only that "he was denied treatment for his serious medical needs by the staff of the Lamar County Jail due to their reckless and deliberate indifference." To the extent the district court's ruling was error it was harmless to Mitchell because the medical records show that

he received reasonable medical care when he was a prisoner in the Jail; and the only defendant remained the Jail, not an entity subject to suit. Thus the amendment he sought to make would have availed him nothing. See Jacquez v. Procunier, 801 F.2d 789, 792-93 (5th Cir. 1986).

For the foregoing reasons, the district court's dismissal of Mitchell's action with prejudice is

AFFIRMED.