

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4430
Conference Calendar

JERRY L. EDWARDS,

Plaintiff-Appellant,

versus

JAMES W. BRANCH, Unit Doctor,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:92-CV-806

(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Plaintiff-appellant Jerry L. Edwards appeals the magistrate judge's dismissal of his 42 U.S.C. § 1983 action alleging deliberate indifference to his medical needs.

Prison officials violate the Eighth Amendment proscription against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, constituting an unnecessary and wanton infliction of pain. Wilson v. Seiter, ___ U.S. ___, 111 S.Ct. 2321, 2323, 2326-27, 115 L.Ed.2d 271 (1991); Estelle v. Gamble, 429 U.S. 97, 105-07, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); Jackson v. Cain, 864 F.2d 1235, 1244 (5th Cir. 1989). Mere

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

negligence will not suffice to support a claim of deliberate indifference. Gamble, 429 U.S. at 105; see also Jackson, 864 F.2d at 1246.

Edwards's dissatisfaction with the level of Procardia Dr. Branch prescribed and his disagreement with the increased dosage do not provide a basis for a claim of deliberate indifference to his medical needs. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). In failing to correct the dosage of Procardia that appeared to be causing the adverse side effects which Edwards called to Dr. Branch's attention, Dr. Branch committed malpractice at most, which is not actionable under § 1983. Id. The magistrate judge improvidently dismissed the action for lack of subject matter jurisdiction. Edwards successfully invoked the court's jurisdiction by alleging a claim of deliberate indifference to his medical needs under § 1983. However, the dismissal can be affirmed, as Edwards's allegations lack an arguable basis in law, even taking all of his allegations as true. Booker v. Koonce, ___ F.3d ___, No. 92-4226, slip op. at 6497-98 (5th Cir. Sept. 16, 1993); see Wesson v. Oglesby, 910 F.2d 278, 282 (5th Cir. 1990) (affirming district court's dismissal under 28 U.S.C. § 1915(d) after improper credibility determinations were made based on Spears hearing because, under most liberal interpretation, plaintiff's claims had no arguable merit as a matter of law); see also Bickford v. International Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981) (this Court can affirm the district court's dismissal on an alternate basis).

AFFIRMED.