

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-5198

(Summary Calendar)

BYRON MITCHELL,

Plaintiff-Appellant,

versus

CARL GRIFFIN, Sheriff, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(1:92-CV-538)

(January 12, 1994)

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

PER CURIAM:*

Byron Mitchell, proceeding pro se and in forma pauperis, and formerly an inmate at the Jefferson County Jail in Beaumont Texas, brought a civil rights action under 42 U.S.C. § 1983 (1988), claiming that several jail officials were deliberately indifferent to his need for medical care to his injured hand.¹ The district

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ "To prevail on an eighth amendment claim for deprivation of medical care, a prisoner must prove that care was denied and that this denial constituted `deliberate indifference to serious

court, adopting the magistrate judge's report and recommendation, granted the defendants' motion for summary judgment. Finding no error, we affirm.

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Cent. R.R.*, 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the movant carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Id.* at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

medical needs.'" *Johnson v. Treen*, 759 F.2d 1236, 1237 (5th Cir. 1985) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251 (1976)).

The summary judgment evidence demonstrated that Mitchell injured his hand on or about April 6, 1992, after an altercation with another inmate. Mitchell received a wrap to his hand and was given some pain medication. The next day, x-rays taken of Mitchell's hand indicated a fracture. On April 8, jail officials made an appointment for Mitchell to see Dr. Clark of the Beaumont Bone & Joint Clinic. The following day, Dr. Clark placed Mitchell's hand in a splint and prescribed further pain medication. Mitchell was seen two additional times by Dr. Clark before the cast was removed from Mitchell's hand on May 6, 1992. Based on this evidence, the district court correctly found that no genuine issue of material fact existed regarding Mitchell's claim that jail officials were deliberately indifferent to his serious medical needs. "The legal conclusion of `deliberate indifference,' . . . must rest on facts clearly evincing `wanton' actions on the part of the defendants." *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985). The summary judgment evidence set forth above demonstrates no facts from which one could infer wanton actions on the part of jail officials. Because Mitchell's conclusory allegations² cannot withstand a properly raised motion for summary judgment, the district court's judgment is AFFIRMED.³

² We also find no summary judgment evidence which would raise a genuine issue of material fact regarding Mitchell's claims that jail officials were deliberately indifferent to his alleged back and neck injuries.

³ We do not find fatal the failure of the defendants to authenticate Mitchell's medical records submitted in support of their motion for summary judgment, as Mitchell at no time objected to the authenticity of those records. See *Eguia v. Tompkins*, 756

F.2d 1130, 1136 (5th Cir. 1985) ("Documents presented in support of a motion for summary judgment may be considered even though they do not comply with the requirements of Rule 56 if there is no objection to their use. Thus the court acted within its discretion when it relied upon the documents, rather than, sua sponte, requesting that the defendants properly authenticate them." (citations omitted)).