IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5540
Conference Calendar

LEROY JEROME WARE, II,

Plaintiff-Appellant,

versus

JANIE COCKRELL, Unit Warden
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9 93 CV 139
- - - - - - - - - - -
(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Leroy Jerome Ware II, a state prisoner confined at the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) filed a civil rights action against three TDCJ-ID employees, including two physicians, asserting what amounted to a claim that they were deliberately indifferent to his serious medical needs and that they inflicted cruel and unusual punishment upon him by forcing him to perform manual labor that aggravated a pre-existing injury.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A complaint is frivolous if it lacks an arguable basis in law or in fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994) (citing Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)).

To prove that medical treatment by a prison physician has violated the Eighth Amendment's prohibition against the "unnecessary and wanton infliction of pain," a prisoner must allege acts or omissions by the physician that constitute deliberate indifference to the prisoner's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); Mendoza v. Lynaugh, 989 F.2d 191, 193 (5th Cir. 1993); see Wilson v. Seiter, 501 U.S. 294, ___, 111 S.Ct. 2321, 2323, 2326-27, 115 L.Ed.2d 271 (1991).

A physician's negligent treatment or diagnosis of a medical condition does not constitute a violation of the Eighth Amendment. Facts do not constitute deliberate indifference unless they "clearly evince the medical need in question and the alleged official dereliction." Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (internal quotation and citation omitted). Deliberate indifference entails wanton actions. "Wanton means reckless--without regard to the rights of others . . . . Wantonly means causelessly, without restraint, and in reckless disregard of the rights of others." Id. (internal quotation and citation omitted). "Medical malpractice does not become a

constitutional violation merely because the victim is a prisoner." Gamble, 429 U.S. at 106.

Ware was seen by prison physicians on two separate occasions. In effect, Ware's complaint amounts to a disagreement with his medical treatment. Such a position does not establish a constitutional violation. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Because it appears that the doctors responded to Ware's medical needs and there is no indication that they were unprepared to offer the proper course of treatment, the district court did not abuse its discretion by dismissing the inadequate medical-treatment claim against the physician-defendants. See Jackson v. Cain, 864 F.2d 1235, 1244-45 (5th Cir. 1989).

Supervisory officials are not liable under § 1983 for the actions of subordinates under any theory of vicarious liability. Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). A supervisor may be liable for an employee's acts if the civil rights plaintiff shows that the supervisor was (1) personally involved in the alleged constitutional deprivation, or (2) demonstrates "a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Id. at 304.

Ware fails to allege any facts showing that Cockrell was personally involved in the alleged failure to treat him. Cockrell, even though unaware of the activities of the physicians would be liable if she implemented a policy so deficient that the policy itself was a "repudiation of constitutional rights" and

the "moving force of the constitutional violation." Id. (internal quotations and citations omitted). Because Ware's medical claim is legally frivolous and because there is no indication that Cockrell was aware of Ware's medical complaints or that a policy existed to deny Ware adequate medical treatment, the district court did not abuse its discretion by dismissing the inadequate medical-treatment claim against Warden Cockrell.

In certain circumstances, prison work conditions may violate the Eighth Amendment's prohibition against cruel and unusual punishment. Jackson, 864 F.2d at 1245. In Howard v. King, 707 F.2d 215 (5th Cir. 1983) the Court cited an Eighth Circuit case which noted "that prison work requirements which compel inmates to perform physical labor which is beyond their strength, endangers their lives, or causes undue pain constitute cruel and unusual punishment." Id. at 219.

Absent clearly established law, "prison officials cannot be held to a higher standard of care than the surrounding community when providing for the safety of prisoners." Jackson, 864 F.2d at 1245. Ware does not assert that his work on the hoe squad is beyond his strength or caused undue pain, or that prison officials were implementing a lower standard of care than the surrounding community. Further, he does not suggest that prison officials assigned him to a work detail which they knew would aggravate his ailment, or that his injury was worsened. See id. at 1246.

AFFIRMED. Ware's motion to proceed IFP on appeal is DENIED as unnecessary.