

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7491  
Summary Calendar  
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JOHNNIE TASBY, ET AL.,

Plaintiffs,

JOHNNIE TASBY,

Plaintiff-Appellant,

versus

W.J. ESTELLE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Southern District of Texas  
(G-83-CV-265)

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(August 19, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.\*

PER CURIAM:

Plaintiff-appellant Johnnie Tasby (Tasby), a Texas prisoner, appeals the dismissal of his damage suit under 42 U.S.C. § 1983 against various prison supervisory officials. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Tasby (along with other prisoners) filed his suit in 1983. By July 1985, in response to discovery requests, defendants had furnished Tasby copies of his complete prison medical record, disciplinary record, and administrative grievance record. In September 1985, a pretrial conference was held, at which Tasby personally was present and elected to pursue monetary damages rather than damages for civil contempt under the *Ruiz* decree, and it was noted that counsel would be appointed. Counsel was appointed for Tasby (and the other plaintiffs) October 1, 1985. Counsel's motion to extend discovery to February 14, 1986, was granted. On December 13, 1985, the court denied motions Tasby had filed *pro se* in July 1985 for default judgment for failure to comply with discovery. A discovery dispute, in which defendants asserted qualified immunity, apparently resulted in the scheduling for June 11, 1987, of a hearing under *Spears v. McCotter*, 766 F.2d 179, 181 (5th Cir. 1985); on that date, the parties met in the court's chambers but due to objections by Tasby's counsel no hearing was held.

In February 1989, a status conference was held; plaintiffs were ordered to file an amended complaint with greater specificity, and discovery was allowed to continue until August 14, 1989. Another status conference was held March 15, 1991.

Tasby (and the other plaintiffs) filed a second amended complaint on June 20, 1991. Defendants filed an answer thereto, asserting qualified immunity, and moved to dismiss under FED. R. CIV. P. 12(b)(6), because defendants asserted qualified immunity and the amended complaint failed to allege what the various individual

defendants did which assertedly violated Tasby's rights. Tasby responded on August 29, 1992, asserting that "[t]he ability to state specifically as to who denied the inmate treatment is, and will be, based upon discovery."

In March 1992, the magistrate judge recommended that the defendants' motion to dismiss be granted, noting that at the March 1991 status conference "the Court informed counsel for Plaintiffs that the amended complaint would supersede all prior pleadings and would be Plaintiffs' last chance to plead their best case under the dictates of governing Fifth Circuit authority." The magistrate judge further noted "[t]here has been ample opportunity to discover the facts in this case" and "furthermore, Plaintiffs bypassed a *Spears* hearing." The magistrate judge noted that, in light of defendants' qualified immunity pleas, the complaint was "deficient for failing to tell the Court by whom and how he was denied medical attention, i.e., which defendants exhibited deliberate indifference, through what kinds of acts, to his serious medical needs." Further, the mere general and conclusory allegation that during the period from July 28, 1982 to 1984 "his treatment was directed and supervised by" the warden, who had previously been dismissed from the case for failure to timely serve, and six named defendants who held various supervisory positions, "reveals nothing about a constitutional violation by any particular defendant." The magistrate judge concluded that "Tasby's complaint is so riddled with pleading deficiencies of this nature that it simply cannot withstand Defendants' motion to dismiss. There are simply no individual acts of the named defendants alleged that demonstrate to

this Court that any of these individuals violated Plaintiff's civil rights." Tasby's counsel filed objections to the magistrate judge's report, but did not suggest how his complaint could be made more specific if not dismissed. The district court ultimately overruled objections to the magistrate judge's report, adopted it, and dismissed Tasby's suit. We are in general agreement with the rationale of the magistrate judge as applied to this case, and hence find no error in the Rule 12(b)(6) dismissal here. See also *Schultea v. Wood*, No. 93-2186, slip op. 5636 at 5639 n.2 (5th Cir. Aug. 9, 1994).

Tasby's other complaints are without merit. There was no abuse of discretion in denying his July 1985 motion for default judgment. Nor did the district court abuse its discretion in denying Tasby's post-judgment motions. Tasby's complaints about appointed counsel do not entitle him to relief. The order appointing counsel recites that "Plaintiffs request the appointment of counsel"; nor does the record reveal or even suggest any objection by Tasby. Tasby is properly bound by the actions and inactions of counsel, and concurrent hybrid representation is not authorized. Tasby's complaint of the dismissal without prejudice of his civil contempt claims for *Ruiz* decree violations is meritless; Tasby had elected not to pursue this relief and to seek damages under section 1983 instead; further, court orders do not form the basis for section 1983 liability. *Green v. McKaskle*, 788 F.2d 1116, 1122-24 (5th Cir. 1986).

Tasby has failed to demonstrate any reversible error. The judgment of the district court is

AFFIRMED.