IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7799

GEORGE KING,

Plaintiff-Appellant,

versus

JESSIE BROOKS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-1:89-195-D-D)

(September 25, 1995)

Before POLITZ, Chief Judge, WISDOM and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:[*]

George King claimed that, while he was incarcerated in the Lowndes county jail, various officials violated his constitutional rights by showing a deliberate indifference to his serious medical needs. He filed a complaint pursuant to 42 U.S.C. §1983. The district court granted summary judgment in favor of the defendants. 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS

George King is a prisoner currently confined at the Rankin County Correctional Facility in Mississippi. He alleges that jail officials in Lowndes County, Mississippi, were deliberately indifferent to his serious medical needs while he was imprisoned for two weeks at their facility. Defendants include Sheriff Dennis E. Prescott, head jailer Jessie Brooks, and jail administrator Ron Musgrove.

After his conviction on drug charges, King entered the Lowndes County Jail on May 25, 1989 with a preexisting back injury, but without the prescribed pain medication that he was taking four times a day. According to the defendants, King did not request pain medication, but five days after he was incarcerated, he complained of back pain and asked to see a doctor. The jail's registered nurse responded to plaintiff's complaint, and noted that King was walking stiffly and moving slowly. According to King, in addition to asking the jailers for medication, he requested permission to speak to the Sheriff about obtaining his medication, he had a fellow inmate write a letter to the Sheriff requesting medication and to see a doctor, and he had an outside friend telephone the Sheriff about the matter. He alleges that the defendants deliberately ignored his requests; however, he admits that his pain and stiffness were not so constant that he could never get out of bed. He was well enough to see his attorneys and family, but apparently neither his friends nor his family tried to bring his pain medication from home. The nurse attempted, without

success, to contact both King's specialist in Memphis, and another doctor in Columbus, but did not send him to see the doctor who was at the jail attending to other prisoners. The nurse also discussed plaintiff's condition with the jail administrator who advised that arrangements would be made to treat the medical problems at the state's Rankin County facility. It is undisputed that, when King was transferred to Rankin County the following week, he received a medical check-up and medication upon arrival.

On April 17, 1991, King's complaint survived a *Spears*[1] hearing. Because King is illiterate, the court appointed an attorney -- the first of four attorneys who have represented King in this case. The first two court-appointed attorneys did not respond to the defendants' repeated requests to schedule King's deposition and to comply with discovery. King was finally deposed without an attorney to assist him, and the defendants then filed a motion to dismiss for failure to comply with discovery and a motion for summary judgment. The third court-appointed attorney did no more than the first two, and the district court adopted the magistrate judge's report and recommendation denying the defendants' motions, concluding that critical factual issues were in dispute.

In January 1993, a fourth attorney was appointed for King. Shortly thereafter, the defendants moved to dismiss the case, asserting the defense of qualified immunity. Because the motion rested on matters outside the pleadings, the magistrate judge

1. *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

considered the motion as one for summary judgment. King's attorney filed no response to the motion, and the district court found that although the plaintiff King had demonstrated that he suffered from a serious medical need, he failed to demonstrate that prison officials were deliberately indifferent to that need. Accordingly, the district court adopted the magistrate's report and recommendation granting summary judgment for the defendants, concluding that qualified immunity barred the plaintiff's cause of action.

Without the assistance of counsel, the plaintiff appeals, arguing that the district court erred in granting summary judgment for the defendants because a genuine issue of material fact exists whether the defendants were deliberately indifferent to his medical needs. It is now almost six years since King first asked for medical help.

DISCUSSION

We review a grant of summary judgment *de novo,*[2] and we construe *pro se* documents liberally.[3] Summary judgment is appropriate if, after reviewing the record in the light most favorable to the nonmoving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of

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2. *Berry v. Armstrong Rubber Co.*, 989 F.2d 822, 824 (5th Cir. 1993), *cert. denied*, 114 S.Ct. 1067 (1994).

3. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

law.[4] Similarly, a *pro se* complaint can only be dismissed for failure to state a claim if it appears "'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'"[5] Nevertheless, while we resolve factual controversies in favor of the nonmoving party when reviewing a summary judgment, we do not assume that the nonmoving party could or would prove the necessary facts.[6] Thus, summary judgment is appropriate in any case "where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant.[7]

Against this backdrop, we now consider whether King's complaint is cognizable. In order to state a cognizable claim of an Eighth Amendment violation in the medical sense, prisoners must show that prison officials were deliberately indifferent to their serious medical needs constituting unnecessary and wanton infliction of pain.[8] The Supreme Court defined deliberate indifference as requiring a showing that the official was subjectively aware that an inmate faced a substantial risk of serious harm and [he] disregarded that risk by failing to take

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4. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 311 (1986).

5. *Estelle v. Gamble*, 429 U.S. at 106.

6. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (1994).

7. *Id*. (Citation omitted).

8. *Estelle v. Gamble*, 429 U.S. at 104-06.

reasonable measures to abate it.[9] Conversely, prison officials who actually know of a substantial risk to an inmate's health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted.[10]

We reject the defendants' contention that because King had access to people outside the prison, the defendants are absolved of all responsibility for the plaintiff's welfare. A prisoner's contact with people outside the prison does not relieve prison officials of the duty imposed on them by the Eighth Amendment to provide humane conditions of confinement. Prison officials have a duty to ensure that inmates receive adequate food, clothes, shelter, and medical care.[11]

However, there is no evidence that the plaintiff faced a "substantial risk of serious harm." When King entered the jail in May, he had been out of the hospital since February and apparently has not been hospitalized for his back since then. X-rays were essentially negative, and there is no suggestion that King was in excruciating or debilitating pain.

Moreover, the defendants' response was reasonable. This court has held that there was no deliberate indifference when a prisoner with a known prior back injury was ordered to continue working

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9. *Farmer v. Brennan*, __ U.S. __,128 L.Ed.2d 811, 114 S.Ct. 1970, 1974-84 (1994); *Reeves v. Collins*, 27 F.3d 174, 176-77 (5th Cir. 1994).

10. *Farmer*, 114 S.Ct. at 1982-83.

11. *Farmer*, 114 S.Ct. at 1976; *see also, Alberti v. Klevenhagen*, 790 F.2d 1220, 1223 (5th Cir. 1986), *cert. denied,* 113 S.Ct 2996 (1993).

under threat of disciplinary action, despite his repeated complaints of pain.[12] If this court found that the officials' actions were reasonable because the prisoner's medical records did not include any restrictions, then *a fortiori*, the officials' actions in the instant case likewise do not amount to a constitutional violation. The nurse did try twice to contact a doctor for King, and the defendants did make sure that King would be treated as soon as he reached Rankin County. Thus, even if King requested pain medication as he contends, he cannot show that the jail officials acted with "deliberate indifference," and summary judgment was properly granted.

AFFIRMED.

12. *Reeves v. Collins*, 27 F.3d at 177.