

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8012
Summary Calendar

THOMAS EARL ROBERTSON,

Plaintiff-Appellant,

versus

MARK A. HILL, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-91-CA-332)

(January 12, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Robertson, a Texas prisoner, filed a pro se 42 U.S.C. § 1983 complaint alleging that after he received a leg injury, (1) he continued to be assigned to work in areas that did not properly satisfy his medical restrictions, and (2) prison medical staff did not inform the classification committee regarding his medical restrictions. After an extensive Spears hearing, in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

which both Robertson and prison officials testified and Robertson's medical records were introduced, the magistrate judge concluded that Robertson's complaint must be dismissed as frivolous, that is, his complaint has no arguable basis in law or in fact. 28 U.S.C. § 1915(d); Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733 (1992). The district court adopted the magistrate judge's recommendations and dismissed. Finding no error, we affirm.

It was Robertson's duty to allege facts that, if proved, would show that the prison officials were deliberately indifferent to his serious medical needs, as a result of which they unnecessarily and wantonly inflicted pain upon him in violation of the eighth amendment. Wilson v. Seiter, ___ U.S. ___, 111 S. Ct. 2321, 2323, 2326-27 (1991). The legal conclusion of deliberate indifference must rest on facts clearly evincing wanton actions by the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). A mere disagreement with one's medical treatment is not sufficient to state a cause of action under § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Further, mere negligence will not support a claim of deliberate indifference. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). The facts elicited at the Spears hearing did not support Robertson's conclusional allegations of a constitutional violation.

Robertson injured his knees and ankle in December, 1990, and intermittently over the next six months he received considerable medical care and treatments for the injury, including special work and lifestyle restrictions and an air brace for his

right ankle. He complains that Dr. Hurley did not properly communicate his work restrictions to the prison classification committee or officials under whom he worked. The hearing established that, if there was such an error, it was accidental rather than deliberate, negligent rather than wanton. To the extent Robertson suggests that the medical restrictions he received were inadequate, this represents a disagreement with his mode of treatment rather than evidence of deliberate indifference by prison officials. Robertson's brief mentions a Texas statute that prohibits work assignments exceeding the physical restrictions imposed by a prison physician. Tex. Civ. Stat. Ann. art. 6166x. This statute was, however, repealed before he was even injured. Acts 1989, 71st Leg. Ch. 212, § 3.03, effective September 1, 1989.

Finally, Richardson appears to contend that the district court should have permitted him to amend his complaint to add Governor Ann Richards as a defendant. He has stated no constitutional claim against Governor Richards, hence, amendment of his complaint would not resurrect this case.

The judgment of the district court is AFFIRMED.