IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8392
(Summary Calendar)

GREGORY HOUSE,

Plaintiff-Appellant,

versus

CATHY A. HURLEY, DR., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-91-CA-90)

(November 16, 1993)

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

PER CURIAM:*

In this civil rights suit under 42 U.S.C. § 1983, Plaintiff-Appellant Gregory House, a state prisoner in Texas proceeding pro se and in forma pauperis (IFP), again appeals the dismissal of his action under Fed. R. Civ. P. 12(b)(6) for failure to state a claim

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

upon which relief may be granted. Concluding that House's amended complaint does contain allegations which, if proved, would be sufficient to state a claim on which relief could be granted, we vacate the district court's dismissal and again remand for further consistent proceedings.

I

FACTS AND PROCEEDINGS

House's case is before us on appeal for a second time. When this cause was before us previously, House v. Hurley, No. 92-8241 (5th Cir. Jan. 11, 1993) (unpublished) (House I), we vacated and remanded the district court's dismissal of House's deliberate indifference claim, holding that he had stated a claim based on his allegations that prison officials were requiring him to work in violation of his medical restrictions. In remanding, we required the district court to give House the opportunity to amend his complaint to name the proper defendants for his claim.

On remand, House did just that: He amended his complaint to name the various defendants involved. He also alleged that sometime in September of 1990 (House corrected the year to 1991 at the Spears[1] hearing) he was assigned to do field labor in spite of his medical records which verified that he had back problems, and that he was unable to lift the amount of weight required or to maintain the pace of the other inmates. He further alleged that he was assigned to the medical hoe squad supervised by defendants Lt. Mark Hill and Sgt. Douglas Phillips; that this medical squad

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

was sometimes intermingled with regular hoe squads; and that he was required to do the same amount of work and maintain the same pace as the regular field squads.

House alleged also that he had continued to inform Hill and Phillips about his back and his inability to keep up with the other workers, but that Hill and Phillips demanded that House keep up and maintain the same workload as the others, telling him that his failure to do so would result in disciplinary action. House alleged that, on numerous occasions when the pain in his back caused by exceeding his capacity caused him to slow his work pace, he did in fact receive disciplinary infractions from field officers.

House went on to allege that he was repeatedly required to bend over, pick up rocks, and put them in bags; and that he was required to lift these bags of rocks weighing between 80 and 125 pounds. He averred that he was also disciplined for failing to pick up a reasonable number of rocks, as well as for failing to pick a reasonable number of onions, for failing to cut grass at the same pace as other inmates, and for failing to cut a reasonable amount of grass.

House complained too that he continued to explain to Hill and Phillips that he could not do the same work at the same pace as the others; and that Hill and Phillips had access to his medical records and could check his complaints, but refused and failed to do so. He alleged that he was forced to work beyond his capacity in spite of his medical problems, making it extremely painful for

him to keep up. Finally, House prayed for damages from the defendants for deliberate indifference to his medical needs.

The magistrate judge held a Spears hearing. House testified that due to a back injury he sustained before entering TDC, he continues to have low back pain. Dr. Hurley confirmed that House had been treated numerous times for complaints of subjective chronic low back pain. His medical classification was changed on September 9, 1991, to a 3EP on his low back, which means that he was restricted from extremely strenuous work, including from lifting more than 50 pounds. Dr. Hurley stated that in her opinion House was fully capable of doing the work on the medical squad if he did not exceed the 50 pound limit.

House testified that he was required to lift bags weighing up to 80 pounds. He also testified that he was ordered to do jobs that were excessive and that he could not physically do, and that even if the weights he was required to lift were 50 pounds or less, he was required to lift such loads repeatedly and to bend over with no breaks, all of which aggravated his back condition. House described his pain as a cramping or tightening of the muscles in his lower back. He stated that sometimes when he over-exhausts himself it hurts just to "raise up." Dr. Hurley testified that this was not unusual for manual laborers.

Warden Dretke and Officer Mark Rainwater testified at the Spears hearing, confirming House's allegations that the field officers assigned to a medical squad have access to the prisoner's medical summary, are aware of the medical restrictions, and are

given authority and discretion to determine whether a prisoner is working up to his capabilities. They are instructed to tell prisoners to work within their restrictions.

Despite the extensive allegations of House's amended petition, as further fleshed out in the Spears hearing, the magistrate judge recommended that the suit be dismissed for failure to state a claim. In apparent disregard of our holding in House I, the magistrate judge found that House had alleged nothing more than a difference of medical opinion between himself and the medical staff as to what his work restrictions should be, which did not state a claim of deliberate indifference. The magistrate judge also found that House had failed to allege a serious medical need because his complaints of tight muscles and cramps in his back alleged mere discomfort and not serious pain.

The district court adopted the recommendation and dismissed this case under Fed. R. Civ. P. 12(b)(6), without prejudice. House timely appealed.

II

ANALYSIS

House argues on this, his second appeal of essentially the same assignments of error that we agreed with in House I, that he has alleged that he was required to work in violation of his medical restrictions because his medical squad was often required to work with and at the same pace as non-medical squads. He also argues that he does suffer pain in his back, not merely discomfort, and that he should not be penalized for his attempt to describe his

pain in non-medical terms.

We review a Rule 12(b)(6) dismissal de novo. Jackson v. City of Beaumont Police Dept., 958 F.2d 616, 618 (5th Cir. 1992). We must accept all well pleaded facts as true and view them in the light most favorable to the plaintiff. Cooper v. Sheriff, Lubbock County, Texas, 929 F.2d 1078, 1082 (5th Cir. 1991). We may not uphold the dismissal unless "it appears `beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (other citations omitted).

To state a claim for relief under 42 U.S.C. § 1983 for denial of medical care, a prisoner must show that care was denied and that this denial constituted deliberate indifference to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). "[T]he constitutionality of a particular working condition must be evaluated in the light of the particular medical conditions of the complaining prisoner." Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). "If prison officials knowingly put [House] on a work detail which they knew would significantly aggravate his serious physical ailment such a decision would constitute deliberate indifference to serious medical needs." Id.

House's allegation that he was required to lift bags of rocks weighing over 50 pounds, which if proved would constitute a clear violation of his 50-pound lifting restriction, does state a claim

of deliberate indifference. His allegation that he was required to keep pace with a regular hoe squad even though he was assigned to a medical squad also states such a claim. And his allegation that he was required to do work which he continuously informed the defendants aggravated the pain in his back also states such a claim.

Accepting these well pleaded facts as true, and viewing them in the light most favorable to House, we cannot say that it does not appear "beyond doubt" that he could prove no set of facts which would entitle him to relief. Further, if House could prove his repeated allegations of back pain, coupled with his medical history of chronic low back pain, he would clearly demonstrate a serious medical need.

The magistrate judge clearly erred in recommending dismissal under Rule 12(b)(6) and the district court similarly erred in adopting that recommendation and again dismissing House's action under Rule 12(b)(6). We therefore vacate the judgment of the district court and remand this case for further proceedings on House's complaint as amended. See Hickson v. Garner, No. 93-8231 (5th Cir. Sep. 13, 1993) (unpublished; copy attached) (case vacated and remanded with similar allegations of being required to work in violation of medical restrictions).

Additionally, the information adduced at the Spears hearing fleshing out House's complaint beyond its four corners and thus beyond the strict limits of § 12(b)(6) considerationsQtogether with the allegations of House's complaint as amendedSQis more than

sufficient to withstand a challenge of frivolity. House's complaint is therefore immune from dismissal not only under Rule 12(b)(6) but also under § 1915(d). Our finding on this point should not be construed as a prediction, one way or the other, of the likelihood of House's success in future proceedings on his claim, whether they be on motions for summary judgment, in a full trial on the merits, or both.

VACATED and REMANDED.