

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-9158
Summary Calendar

WALTER LEE BUCHANAN II,

Plaintiff-Appellant,

VERSUS

JIM RICE, Sheriff,
Yoakum County Jail, et al,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CV-56)

(August 29, 1994)

Before GARWOOD, DAVIS and JONES, Circuit Judges.

PER CURIAM:¹

Walter Lee Buchanan filed this § 1983 suit alleging that he had been denied adequate medical care while he was incarcerated at the Yoakum County Jail. The district court granted summary judgment for defendants. We affirm.

I.

Buchanan was incarcerated at the Yoakum County Jail from

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

November 1992 until April 1993. In December 1992, Buchanan allegedly fell in the shower and injured his back and knee. He was treated by Dr. Bodinr Thepchatri and Dr. Paul Meyers. Because he was dissatisfied with the medical treatment he received for his knee injury, Buchanan filed a **pro se, in forma pauperis** (IFP) civil rights complaint against Yoakum County Sheriff Jim Rice and head jailer Venumm Fitzgerald² alleging that he had been denied adequate medical care for his knee injury.³ The district court granted defendants' motion for summary judgment. Buchanan filed his notice of appeal in December 1994.

In February 1994, defendants filed a motion in the district court to revoke Buchanan's IFP status. The district court granted the motion on March 22, 1994, after the parties had completed briefing in this court. Buchanan then filed a motion in this court to proceed IFP on appeal.

II.

A.

As an initial matter, we must determine whether the district court had jurisdiction to revoke Buchanan's IFP status after he had filed a valid notice of appeal. The filing of a notice of appeal

² Buchanan settled his claim against Dr. Thepchatri and his complaint was dismissed with prejudice as to Dr. Thepchatri. This dismissal is not challenged on appeal.

³ Buchanan also alleged that he had been denied access to the law library. However, the parties did not address this issue on summary judgment, the district court did not address it in its final judgment, and Buchanan has not raised it on appeal. Therefore, the issue is abandoned. **See Evans v. City of Marlin**, 986 F.2d 104, 106 n.1 (5th Cir. 1993).

divests the district court of jurisdiction to act on matters involved in the appeal, except to aid the appeal, correct clerical errors, or enforce its judgment if the judgment has not been stayed or superseded. **See Avoyelles Sportsmen's League, Inc. v. Marsh**, 715 F.2d 897, 928 (5th Cir. 1983). Because an order revoking IFP status does not fall within any of these exceptions and because Buchanan's appeal had been docketed in this court and the briefing schedule had been issued, the district court did not have jurisdiction to revoke Buchanan's IFP status. Therefore, Buchanan may proceed IFP on appeal and his motion to proceed IFP is denied as moot.

B.

Buchanan argues that the district court erred in granting summary judgment. We review the district court's grant of summary judgment **de novo**. **See Weyant v. Acceptance Ins. Co.**, 917 F.2d 209, 212 (5th Cir. 1990). Summary judgment is appropriate when, considering all of the facts in the pleadings, depositions, admissions, answers to interrogatories, and affidavits, and drawing all inferences in the light most favorable to the nonmoving party, no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. **See Newell v. Oxford Management, Inc.**, 912 F.2d 793, 795 (5th Cir. 1990).

Buchanan was a pretrial detainee while he was incarcerated at the Yoakum County Jail.⁴ Pretrial detainees must be provided with

⁴ Although defendants argued below that Buchanan was a prisoner subject to the Eighth Amendment deliberate indifference standard, they do not challenge the district court's finding that

reasonable medical care, unless the failure to supply it is reasonably related to a legitimate government objective. **See Rhyne v. Henderson County**, 973 F.2d 386, 391 (5th Cir. 1992).

After he fell in the shower, Buchanan was taken to the Yoakum County Hospital, where he was treated by Dr. Thepchatri. Dr. Thepchatri recommended sending Buchanan to Lubbock for further testing. In Lubbock, Buchanan was treated by Dr. Meyers, a neurosurgeon who diagnosed a bruised knee and prescribed the use of a knee brace and crutches for three to four days. Dr. Meyers discharged Buchanan at that time.

In his affidavit, Buchanan stated that he repeatedly requested additional medical treatment because his knee remained swollen and painful. However, Buchanan was seen by Dr. Thepchatri on December 28 for a cold and sore throat and Dr. Thepchatri reported no complaints by Buchanan relative to his knee. Buchanan also saw Dr. Gremmel, a family practitioner, in April 1993 for a skin rash. Dr. Gremmel reported no complaints by Buchanan about his knee. We are satisfied that the summary judgment record demonstrates that the defendants responded reasonably to Buchanan's medical needs. The district court correctly granted defendants' motion for summary judgment.

C.

Buchanan also argues that the district court improperly denied his motions for injunctive and habeas relief. Because Buchanan is

Buchanan was a pretrial detainee. Therefore, we apply the Fourteenth Amendment due process standard of reasonable care.

no longer incarcerated at the Yoakum County Jail, his request for injunctive relief is moot. **See Hooten v. Jenne**, 786 F.2d 692, 697 n.6 (5th Cir. 1986). Because Buchanan does not challenge the constitutionality of his conviction, but rather the conditions of his confinement, the district court properly denied him habeas relief.⁵ **See Preiser v. Rodriguez**, 411 U.S. 475, 490 (1973).

D.

Buchanan argues next that the district court erred in denying his motions for appointment of counsel. There is no automatic right to the appointment of counsel in a § 1983 case. **See Ulmer v. Chancellor**, 691 F.2d 209, 212 (5th Cir. 1982). The district court has the discretion to appoint counsel if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d). A district court's refusal to appoint counsel is reviewed for abuse of discretion. **See Cupit v. Jones**, 835 F.2d 82, 86 (5th Cir. 1987). In this case, the district court did not abuse its discretion because Buchanan has demonstrated that he is capable of representing himself. He filed suit, properly responded to two motions to dismiss, propounded discovery requests, and reached settlement with one of the defendants. Moreover, this case does not present exceptional circumstances which require the appointment of counsel.

⁵ Buchanan argues for the first time on appeal that the conditions of his confinement are constitutionally deficient. We generally do not address issues raised for the first time on appeal. **See Yohey v. Collins**, 985 F.2d 222, 225 (5th Cir. 1993). Because the issues raised by Buchanan are not purely legal, we decline to address them.

E.

Buchanan has filed a number of additional motions in this court. These motions are either moot or were not properly presented to the district court. These motions are all denied.

AFFIRMED.