IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10172
Conference Calendar

LARRY HILL,

Plaintiff-Appellant,

versus

DON CARPENTER, Tarrant County Sheriff, ET AL.,

Defendants-Appellees.

- - - - - - - - - - -

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:91-CV-782-E

- - - - - - - - - - -

(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Larry Hill, an inmate formerly at the Tarrant County Jail, appeals the district court's grant of summary judgment in favor of the defendants in Hill's civil rights suit. Hill challenges the district court's determination that the summary judgment evidence established that the jailer who hit Hill's hand with a set of keys acted in a reasonable manner and that the jailer's use of force was the permissible de minimis use of force constitutionally allowed to maintain order and discipline in the

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

jail. He also challenges the court's dismissal of his claims against the supervisory officials at the jail.

This Court reviews a grant of summary judgment de novo. Brothers v. Klevenhagen, ____ F.3d ____, (5th Cir. Aug. 1, 1994, No. 93-2453) slip op. at 5822. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Id. (quoting Fed. R. Civ. P. 56(c)). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the nonmoving party's case. Id. After a proper motion for summary judgment is made, the nonmovant must set forth specific facts showing that there is a genuine issue for trial. Id.

Hill was a pretrial detainee at the time of the incident; therefore, the Due Process Clause is the appropriate constitutional basis for his suit. See Valencia v. Wiggins, 981 F.2d 1440, 1446 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). Accordingly, we must determine whether the measure taken inflicted unnecessary and wanton pain and suffering. Id. In so doing, we look to whether the "force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm." Id. (internal quotations and citation omitted). Factors demonstrating the detention official's subjective intent include: (1) the need for the application of force; (2) the threat

reasonably perceived by the detention facility official; (3) any efforts to temper the severity of a forceful response; (4) the need to act quickly and decisively; and (5) the extent of the injury suffered. Id. at 1446-47.

The objective factors surrounding the jailer's use of force establish that the jailer was acting in a good-faith effort to restore discipline when he struck Hill's hand with the keys. See Valencia, 981 F.2d at 1446. Hill, a demonstrated threat to jailers, engaged in disruptive conduct by refusing to remove his hand from the bean chute. Despite the fact that Hill had only limited access to the jailer, Hill managed to engage in a "fight" with him. The jailer's statement that he "hoped" Hill would remove his hand by the mere threat of being struck by the keys, further demonstrates his nonmalicious intent. Finally, the injuries suffered by Hill were the result of a de minimis use of force.

The district court did not err by granting summary judgment in favor of the defendants. Accordingly, Hill's concomitant claims against the supervisory officials fail as well, and Hill's argument that the district court should have issued a judgment stating that the defendants violated his constitutional rights is without merit. Insofar as Hill intended to raise as arguments on appeal his allegations regarding the failure of the defendants to photograph his injuries or to allow him to see a nurse, these allegations are insufficiently briefed. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993)(issues raised but not argued are ordinarily abandoned); Evans v. City of Marlin, Tex., 986

F.2d 104, 106 n.1 (5th Cir. 1993)(same). The judgment of the district court is AFFIRMED.