

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10175  
Conference Calendar

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JAMES WILLIAM TEMPLE, SR.,

Plaintiff-Appellant,

versus

DAVID WILLIAMS ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:93-CV-332-E

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(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

James William Temple, Sr., challenges the district court's summary judgment for the defendants. "Summary judgment is proper if the movant demonstrates that there is an absence of genuine issues of material fact." Johnston v. City of Houston, Tex., 14 F.3d 1056, 1060 (5th Cir. 1994); Fed. R. Civ. P. 56(c).

If the moving party carries his initial burden, the burden then falls upon the non-moving party to demonstrate the existence of a genuine issue of a material fact. . . . While the Party opposing the motion may use proof filed by the movant to satisfy his burden, "only evidence -- not argument, not

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 in the complaint -- will satisfy" the burden. "Unsworn pleadings, memoranda or the like are not of course, competent summary judgment evidence."

Johnston, 14 F.3d at 1060 (citations omitted).

In their summary-judgment motion, the defendants asserted their right to qualified immunity. The initial inquiry in determining whether the defendants are entitled to qualified immunity is whether Temple "has asserted a violation of a constitutional right." Hare v. City of Corinth, Miss., 22 F.3d 612, 614 (5th Cir. 1994). To show a constitutional violation of a convicted prisoner's right in the context of a medical claim, the prisoner-plaintiff must show that the defendants were deliberately indifferent to his serious medical needs. See Colle v. Brazos County, Tex., 981 F.2d 237, 244 (5th Cir. 1993). A pretrial detainee is due reasonable medical care under the Fourteenth Amendment. See Fields v. City of South Houston, Tex., 922 F.2d 1183, 1191 (5th Cir. 1991). Under either standard, summary judgment for the defendants was proper.

The competent summary-judgment evidence detailed Temple's medical treatment, including the use of mild analgesics to treat his dyspepsia and chronic lower back pain. In contrast, Temple failed to submit any competent summary-judgment evidence to meet his burden.

Temple's disagreement with his treatment under Dr. Edgeworth amounts to no more than a difference of opinion between doctor and patient as to treatment. As such, it does not rise to the level of a constitutional violation. See Varnado v. Lynaugh, 920

F.2d 320, 321 (5th Cir. 1991). Moreover, a delay in receiving prescribed analgesics and special foods, even if shown through proper summary-judgment evidence, does not equate to punishment under the Fourteenth Amendment nor deliberate indifference under the Eighth Amendment. Mayweather v. Foti, 958 F.2d 91, 91 (5th Cir. 1992).

Because Temple failed to meet his summary-judgment burden in showing a constitutional violation, the defendants were qualifiedly immune; thus, summary judgment for the defendants was proper. See Johnston, 14 F.3d at 1059-60.

AFFIRMED.