UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-10253

(Summary Calendar)

TIMOTHY LEE DANNER,

Plaintiff-Appellee-Appellant,

versus

JIM BOWLES, Dallas County Sheriff, ET AL.,

Defendants,

JIM BOWLES, Dallas County Sheriff,

Defendant-Appellee,

LEONARD L. BUEBER,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(3:93-CV-501-D)

(October 7, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Timothy Lee Danner, a former prisoner at the Dallas County Jail, brought suit *in forma pauperis* and *pro se* against various jail officials, claiming they denied him adequate medical

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[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

treatment, in violation of 42 U.S.C. § 1983 (1988). Two of the defendant prison officials, Sheriff Jim Bowles and Officer Leonard Bueber, moved alternatively to dismiss Danner's claims or for summary judgment. The district court granted Bowles' motion and denied Bueber's. Danner and Bueber each appeal from the rulings against them. We dismiss Danner's appeal for lack of jurisdiction, and we reverse with respect to Bueber's motion for summary judgment or dismissal.

I

Prior to his incarceration in the Dallas County Jail, Danner had injured his back. Consequently, he was taking medication and wearing a back brace at the time of his arrest and subsequent incarceration. Danner alleges that the jail nurse confiscated his medication when he arrived at the jail. Danner also alleges that Bueber confiscated his back brace a few weeks later.

Danner sued Bowles, Bueber, the jail nurses, and others under § 1983, claiming denial of adequate medical treatment. Bowles and Bueber moved for dismissal or summary judgment on the grounds that Danner had failed to state a claim that would overcome their defense of qualified immunity. The district court granted Bowles' motion but denied that of Bueber. Danner appeals the district court's dismissal of Bowles, disputing the district court's finding that Danner had failed to demonstrate Bowles' knowledge of or participation in the alleged denial of medical treatment. Bueber appeals the district court's denial of dismissal or summary judgment, asserting that the district court erred in failing to

apply the "heightened pleading requirement" required in section 1983 cases to Danner's claims.

II

A

Danner appeals the district court's dismissal of Bowles by summary judgment. This court has jurisdiction only over appeals from final decisions of the district courts. *See* 28 U.S.C. § 1291 (1988). "In a lawsuit which contains multiple claims and/or multiple parties, a final judgment exists only if it meets one of two conditions: The judgment must either adjudicate all claims, rights and liabilities of all parties or the district court must expressly conclude that no just reason for delay exists for delaying the entry of final judgment and must expressly order the entry of that judgment pursuant to Rule 54(b)." *Bader v. Atlantic Int'l, Ltd.*, 986 F.2d 912, 914-15 (5th Cir. 1993).[1] Because the district court's ruling satisfies neither of these conditions, it does not constitute a final judgment under 28 U.S.C. § 1291, and

[1] Fed. R. Civ. P. 54(b) provides:
When more than one claim for relief is presented in an action, . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties . . . .

this Court does not have jurisdiction to review it. Accordingly,

we DISMISS Danner's appeal.[2]

B

Officer Bueber appeals the district court's denial of his motion to dismiss, or alternatively, for summary judgment.[3] We review motions to dismiss and for summary judgment *de novo*. *Burns-Toole v. Byrne*, 11 F.3d 1270, 1273 (5th Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 2680, 129 L. Ed. 2d 814 (1994).

Section 1983 provides a civil cause of action for any person against an official who violates that person's constitutional rights under color of law. 42 U.S.C. § 1983 (1988). Law enforcement officials, however, may be entitled to a qualified immunity against such suits if the officers were acting within their discretionary authority. *Siegert v. Gilley*, 500 U.S. 226, ___, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1991), provides the framework for analyzing a plaintiff's allegations in the context of a defendant's defense of qualified immunity.

Although Bueber has the burden of proving his qualified immunity,[4] there is a preliminary inquiry. Because "government officials performing discretionary functions generally are shielded

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[2] Danner is, of course, free to request an interlocutory appeal from the district court under 28 U.S.C. § 1292(b). Otherwise, Danner may appeal this ruling after final judgment on all his claims.

[3] An order denying qualified immunity is immediately appealable. *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S. Ct. 2806, 2817, 86 L. Ed. 2d 411 (1985).

[4] *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137, 141 (5th Cir. 1992) ("[T]he burden of establishing an entitlement to qualified immunity is on . . . the officials seeking to invoke it."), *modified on rehearing*, 15 F.3d 443 (5th Cir. 1993) (en banc), *petition for cert. filed*, 62 U.S.L.W. 3827 (U.S. June 1, 1994) (No. 93-1918).

from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982),[5] the preliminary inquiry must determine whether Danner has sufficiently asserted a violation of constitutional law. *Siegert*, 500 U.S. at ___, 111 S. Ct. at 1793.[6]

A prison official who "knowingly deprives a prisoner of vital medical treatment" violates § 1983. *Williams v. Treen*, 671 F.2d 892, 900-01 (5th Cir. 1982), *cert. denied*, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983); *see also Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976) ("In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."); *Mendoza v. Lynaugh*, 989 F.2d 191, 193 (5th Cir. 1993) ("[I]ndifference to a prisoner's serious medical needs constitutes an actionable Eighth Amendment violation under Section 1983."). To satisfy the threshold requirement of *Siegert*, Danner must have asserted a violation of this standard. Accordingly, Danner must have alleged both harm resulting from the

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[5] *See also Colle v. Brazos County*, 981 F.2d 237, 246 (5th Cir.) ("Government officials are shielded by qualified immunity from liability for damages under § 1983 so long, but only so long, as their conduct has not violated `clearly established statutory or constitutional rights of which a reasonable person would have known.'" (quoting *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S. Ct. 3034, 3038, 97 L. Ed. 2d 523 (1987)), *aff'd on appeal after remand*, 977 F.2d 924 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 2443, 124 L. Ed. 2d 660 (1993).

[6] *See also King v. Chide*, 974 F.2d 653, 656-57 (5th Cir. 1992) (requiring first step of determining whether plaintiff has alleged violation of clearly established constitutional right).

alleged deprivation and deliberate indifference on the part of Bueber.

Bueber contends that Danner's pleadings fail under the "heightened pleading requirement" applicable in § 1983 cases. Danner responds that the United States Supreme Court has abolished the heightened pleading requirement in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, ___ U.S. ___, 113 S. Ct. 1160, 1161, 122 L. Ed. 2d 517 (1993), and he should only be held to the notice pleading standard of Fed. R. Civ. P. 8.[7] We do not need to reach this issue, because, even under the liberal standard of Rule 8, Danner has failed to allege a violation of constitutional right.

Danner's pleadings,[8] allege no more than a muscular injury of his back.[9] We hold as a matter of law that pain from this injury does not rise to the level of a constitutional violation. *See*

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[7] Danner additionally argue that, even if we perpetuate the heightened pleading requirement, we should not hold *pro se* plaintiffs to that standard. The law of this Circuit is otherwise. *See Elliott v. Perez*, 751 f.2d 1472, 1480 (5th Cir. 1985) (("[C]onclusory allegations unsupported by allegations of specific facts are insufficient to support constitutional claims. This is so even in *pro se* petitions."); *see also Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986) ("[I]t has always been this court's policy to give the greatest latitude to *pro se* prisoner complaints in § 1983 actions. Nevertheless, once given adequate opportunity, even a *pro se* complaint must contain specific facts supporting its conclusions." (citations omitted)).

[8] We construe *pro se* pleadings liberally. *See Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972) (holding a *pro se* complaint, "however inartfully pleaded," to "less stringent standards than formal pleadings drafted by lawyers"); *Conley v. Gibson*, 355 U.S. 41, 46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957) (following the rule that "a complaint should not be dismissed for failure to state a claim 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").

[9] Danner's own personal physician diagnosed his condition as "hyperextension/flexion injury to the low back." Hyperextension is a "extreme or excessive extension of a limb or part, and flexion is "the act of bending or being bent." Dorland's Illustrated Medical Dictionary 793, 640 (27th ed. 1988).

Estelle, 429 U.S. at 105, 97 S. Ct. at 291 (holding that not every claim of inadequate medical treatment "states a violation of the Eighth Amendment"); *see also Wesson v. Oglesby*, 910 F.2d 278, 283-84 (5th Cir. 1990) (holding that suffering from delay in treating swollen wrists was not serious enough harm to constitute a violation of § 1983). Accordingly, we remand to the district court with instructions to dismiss Danner's claim against Bueber.

III

For the foregoing reasons, we DISMISS in part, and REVERSE and REMAND in part.