

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10394  
Conference Calendar

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DAVID DANIEL CLARK,

Plaintiff-Appellant,

versus

SHERIFF HARRIS, DON MOORE,  
Jail Administrator, and  
MRS. Moore, Jailer,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:94-CV-583-X  
- - - - -  
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

A complaint filed in forma pauperis may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993); see Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S.Ct. at 1734. If it appears that "insufficient

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

factual allegations might be remedied by more specific pleading," this Court considers whether the district court abused its discretion by dismissing the complaint without any effort to amend. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994)

When either conditions of confinement or denial of medical care is at issue, a prisoner must allege deliberate indifference by the responsible officials in order to state a 42 U.S.C. § 1983 claim. Wilson v. Seiter, 501 U.S. 294, 303-04, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991). A prison official acts with deliberate indifference under the Eighth Amendment "only if he knows that inmates face a substantial risk of serious harm and [he] disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, \_\_\_ U.S. \_\_\_, 114 S.Ct. 1970, 1984, \_\_\_ L.Ed.2d \_\_\_, (1994).

With respect to conditions of confinement, "the Eighth Amendment may afford protection against conditions of confinement which constitute health threats but not against those which cause mere discomfort or inconvenience." Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969 (1989). Thus, extreme deprivations are necessary to establish an Eighth Amendment violation. Hudson v. McMillian, \_\_\_U.S.\_\_\_\_, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992).

There is no indication from Clark's pleadings that the temporary lack of water at Kaufman County Jail, due to a burst water main, produced anything more than "mere discomfort or inconvenience." The condition lasted for the relatively brief period of 27 hours and during this time, prison officials

provided Clark with a carton of milk and a cup of water. Clark also complains, in conclusional terms, of overcrowding and sanitation problems due to the temporary lack of water, but fails to allege facts indicating that he was deprived "of a single, identifiable human need such as food, warmth, or exercise[.]" Wilson, 501 U.S. at 304.

With respect to a claim of cruel and unusual punishment resulting from improper medical care, the facts alleged "must clearly evince the medical need in question and the alleged official dereliction." Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). Acts of negligence, neglect or medical malpractice are not sufficient to give rise to a § 1983 cause of action. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The facts, as alleged by Clark, fail to approach the level of "deliberate indifference" to his serious medical needs. Although prison officials did not provide Clark with his prescribed medication precisely as scheduled, the delays did not extend beyond several hours. Furthermore, Clark failed to allege any resulting harm occasioned by the alleged neglect. See Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993) ("[D]elay in medical care can only constitute an Eighth Amendment violation if there has been deliberate indifference, which results in substantial harm"). Thus, the district court's dismissal under § 1915(d) is AFFIRMED.