

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10522
Summary Calendar

EDDIE LEE BLAIR,

Plaintiff-Appellant,

versus

LEROY SCHULLE, ROGER LINDSEY,
and HOCKLEY COUNTY, TX.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(5:94-CV-80)

(December 19, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA,
Circuit Judges.

PER CURIAM:*

Eddie Lee Blair appeals the dismissal of his civil rights
action against Hockley County, Texas and the officials charged with
operating its jail. We affirm.

*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should not be published.

Background

Blair, a Texas state prisoner proceeding *pro se* and *in forma pauperis*, filed a 42 U.S.C. § 1983 claim against Hockley County, Texas, its sheriff Leroy Schulle, and the administrator of the county jail Roger Lindsey, complaining of conditions in the jail¹ and of the jail's alleged practice of dispensing medication without a licensed nurse. The district court ordered Blair to amend his complaint to state what harm he had suffered from the conditions that he alleged, warning Blair that the failure to amend his complaint timely would result in its dismissal as frivolous. Blair failed to amend his complaint in a timely manner² and the district court ordered a dismissal as frivolous under 28 U.S.C. § 1915(d). Blair timely appealed.

Analysis

In addition to his contention that the district court erred in dismissing his complaint about the unlicensed administration of medication, Blair urges on appeal an additional allegation that the Hockley County authorities unlawfully opened his mail and both

¹Blair complained of both the poor quality and parsimonious quantity of the food and beverages served in the facility, and of the lack of emergency-call buttons in the cells.

²Blair responded four days after the dismissal of his complaint, stating that the dispensed medication caused gastrointestinal problems; he also claimed that he did not receive a copy of the order requesting amendment of his complaint until one day before the amendment was due.

The record reflects that the district court mailed the order directing Blair to amend his complaint to the Hockley County Jail. Blair had been moved and had not informed the court of his new address and the order was returned to the court.

verbally and physically abused him after reviewing its contents. We do not consider on appeal matters not presented to the district court.³

Dismissals as frivolous under section 1915(d) are reviewed for abuse of discretion.⁴ A complaint is frivolous when it lacks an arguable basis either in fact or law. To set forth a cognizable section 1983 claim relating to medical treatment Blair must show that prison officials exhibited "deliberate indifference to his serious medical needs,"⁵ despite knowledge that their actions/inactions exposed the inmate to "substantial risk of serious harm."⁶ He must demonstrate that the authorities disregarded that risk by failing to "take reasonable measures to abate it."⁷

Accepting as timely filed Blair's amendments explaining the alleged harms, we can only conclude that he has failed to allege any facts reflecting that the defendants knew of a substantial risk of serious harm to Blair by their method of dispensing medication and doing so despite that knowledge. Blair's claim is nothing more than an action based on negligence. It is clearly established that actions based on negligence, neglect, or even medical malpractice, do not rise to the level of deliberate indifference required for a

³**Varnado v. Lynaugh**, 920 F.2d 320 (5th Cir. 1991).

⁴**Ancar v. Sara Plasma, Inc.**, 964 F.2d 465 (5th Cir. 1992).

⁵**Woodall v. Foti**, 648 F.2d 268, 272 (5th Cir. 1981).

⁶**Farmer v. Brennan**, _____ U.S. _____, 114 S.Ct. 1970, 1984 (1994).

⁷**Id.**

valid section 1983 claim.⁸ The same is true for Blair's other complaints -- none has merit as a section 1983 claim. The district court did not abuse its discretion in dismissing as frivolous under 18 U.S.C. § 1915(d) Blair's section 1983 claim.

The judgment of the district court is therefore AFFIRMED.

⁸**Fielder v. Bosshard**, 590 F.2d 105 (5th Cir. 1979).