

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10553
Conference Calendar

JOHNNY R. MATTHEWS,

Plaintiff-Appellant,

versus

HUNT COUNTY TEXAS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-904-P

- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Johnny R. Matthews, an inmate formerly at the Hunt County Jail, appeals the district court's dismissal as frivolous of his in forma pauperis (IFP) civil rights complaint against Hunt County, Texas. An IFP complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992); 28 U.S.C. § 1915(d). A § 1915(d) dismissal is reviewed for an abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Matthews argues that the district court erred by analyzing his claims under the deliberate indifference standard of the Eighth Amendment because he notified the court, in his objections to the magistrate judge's report and recommendation, that he was a pretrial detainee at the time of his injury. It is error for a district court not to consider timely-filed objections to a magistrate judge's report and recommendation. See 28 U.S.C. § 636(b)(1)(C); Smith v. Collins, 964 F.2d 483, 485 (5th Cir. 1992). Thus, the district court should have analyzed Matthews's claims under the Fourteenth Amendment standard applied to the claims of pretrial detainees. However, this Court need not disturb the district court's judgment dismissing Matthews's complaint because, even under Fourteenth Amendment standards, Matthews's complaint is frivolous. See Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992)(court may affirm judgment on any basis supported by the record), cert. denied, 113 S. Ct. 1414 (1993); see also Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987)(magistrate judge applied incorrect standard, judgment affirmed on other grounds).

In order to prevail on a 42 U.S.C. § 1983 claim regarding the conditions of his confinement, Matthews must establish that the conditions which allegedly caused his injury amounted to punishment and were not incident to some other legitimate governmental purpose. See Bell v. Wolfish, 441 U.S. 520, 535, 538, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). Further, he must demonstrate a policy or custom of the county which caused the

alleged constitutional deprivation. See Colle v. Brazos County, Tex., 981 F.2d 237, 244 (5th Cir. 1993).

Matthews's assertion that the floor of the shower was wet and slippery is insufficient to establish an intent to punish. Nor do his assertions that the defendant failed to provide handrails, nonskid flooring, or a drain in the floor outside the showers establish the punishment element of his § 1983 claim.

As a pretrial detainee, Matthews had a right to be free from punishment and was entitled to reasonable medical care unless the failure to provide such care was reasonably related to a legitimate governmental objective. Colle, 981 F.2d at 244; Cupit, 835 F.2d at 84-85. Matthews's own assertions reveal that he received reasonable care.

Matthews acknowledges that, after the accident in the shower, he was taken to a local hospital, where his knee was examined and x-rayed. He further acknowledges that he was seen by doctors on numerous occasions. He was again taken to a local hospital for more x-rays after he reinjured the knee while playing volleyball. At most, Matthews alleges negligence, an allegation which, standing alone, does not state a claim under § 1983. See Daniels v. Williams, 474 U.S. 327, 328, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). The district court did not abuse its discretion in dismissing Matthews's complaint as frivolous. The judgment of the district court is AFFIRMED.

Matthews's request to proceed IFP on appeal is DENIED as unnecessary.