

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10651

Summary Calendar

MOHAMMED TAGHIPOUR,

Plaintiff-Appellant,

versus

DAN CHASTINE, Medical
Administrator, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:94-CV-39)

(December 16, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Pursuant to 28 U.S.C. § 1915(d), the district court dismissed Mohammed Taghipour's Bivens action as frivolous. We find that the district court abused its discretion in dismissing Taghipour's complaint. Accordingly, we vacate and remand.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Mohammed Taghipour is a prisoner in the Federal Correctional Institution in Big Springs, Texas. On February 28, 1992, Taghipour was struck in the eye with a ball during a soccer game. He complained of dizziness and pain in his eye but was told that because it was Saturday, he could not get medical attention and had to wait until Monday to have his eye examined. In the following three weeks, a physician's assistant examined Taghipour on four different occasions. During that time, Taghipour continued to experience headaches, dizziness, and blurred vision in his left eye. It was not until April 2, 1992 that Taghipour saw an optometrist. On April 30, 1992, the optometrist issued a report recommending that Taghipour be seen by a retina specialist.

On May 14, 1992, Taghipour was seen by Dr. Shah, a ophthalmologist. On July 31, 1992, Dr. Shah examined Taghipour a second time and told him it was "too late to repair the damage done to the retina and that there was very little prospect of regaining the eyesight in the left eye." Taghipour sought a second opinion from Dr. Fish, who confirmed Dr. Shah's prognosis. Dr. Fish told Taghipour that because the damage was not immediately attended to after the accident, there was nothing that anyone could do to prevent the total loss of eyesight in the left eye. Dr. Fish also told Taghipour that the strain was causing cataracts to develop in his right eye.

Taghipour filed suit. The district court dismissed the complaint as frivolous pursuant to 29 U.S.C. § 1915(d), holding

that since Taghipour was given medical assistance on numerous occasions, he did not allege the requisite deliberate indifference to a serious medical need. The court denied Taghipour's request for reconsideration.

II.

To establish a violation of the Eighth Amendment stemming from prison officials' deliberate indifference to conditions of confinement, a plaintiff must allege that the officials acted or did not act in a wanton fashion. See Wilson v. Seiter, 111 S. Ct. 2321, 2326 (1991). To prove deliberate indifference in an Eighth Amendment case, a

claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. . . . Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.

Farmer v. Brennan, 114 S. Ct. 1970, 1981 (1994) (citations omitted).

Taghipour's allegations are clear and unambiguous that he was hit in the face with a soccer ball on Saturday and was given no medical treatment other than eye drops and Tylenol until the following Monday. Although he was complaining of headaches, dizziness, and blurred vision in his left eye, he was not seen by an optometrist until April 2 and was not seen by an ophthalmologist until May 14. Taghipour alleges that his frequent visits to the

prison medical facilities did not "in any manner indicate that he was being treated for injury to his eye; it was only a tactic to pressure the medical staff into taking his pain and suffering seriously"

It is not readily apparent that these delays in providing medical care are not deliberate indifference to a serious medical need under the test set forth in Farmer. Taghipour's allegations indicate that his eye injury was a serious medical need. Further, it is arguable that the prison officials had knowledge of Taghipour's eye injury and that their actions taken in response to it constitute deliberate indifference. This is particularly true considering Taghipour's allegation that another inmate had been struck in the eye with a baseball and had been immediately taken to be examined by an ophthalmologist. Although Taghipour's claim may ultimately be found to be without merit, it is arguable in law and fact. Accordingly, the district court's dismissal is vacated and the case is remanded for additional proceedings.

VACATED AND REMANDED.