

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10699
Conference Calendar

JERRY C. SMITH,

Plaintiff-Appellant,

versus

MIKE JONES, Unit Health Administration,
Texas Department of Criminal Justice,
Clements Unit, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:93-CV-193

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Jerry C. Smith filed an in forma pauperis (IFP) civil rights complaint against Mike Jones, the unit Health Administrator, alleging that he was denied adequate medical care in violation of the Eighth Amendment. The district court dismissed the complaint as frivolous.

A complaint filed IFP can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This Court reviews the district court's dismissal for an abuse of discretion. Id.

To state a medical claim cognizable under § 1983, a convicted prisoner must allege acts or omissions sufficiently harmful to evidence a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). 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, 128 L. Ed. 2d 811 (1994); see Reeves v. Collins, 27 F.3d 174, 176-77 (5th Cir. 1994) (applying the Farmer standard in the context of a denial-of-medical-care claim). Unsuccessful medical treatment, negligence, neglect, and even medical malpractice do not state a claim under § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Smith has submitted documentation indicating that he believes that his medical condition warrants a medical transfer, although the prison doctors do not agree with his assessment. This argument amounts to nothing more than disagreement with the medical treatment received and not deliberate indifference to serious medical needs. See Varnado, 920 F.2d at 321.

Smith also argues that the district court improperly denied his discovery motions. The district court properly denied these motions because the defendants had not been served and therefore

discovery was premature. To the extent that he argues that he was improperly denied a jury trial, his argument fails because there were no material facts in dispute for the jury to address. See Plaisance v. Phelps, 845 F.2d 107, 108 (5th Cir. 1988).

The judgment of the district court is AFFIRMED. The motions to proceed IFP on appeal and for permission to appeal are DENIED as unnecessary, and the motion to introduce evidence is DENIED as moot.