

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10960
Summary Calendar

John S. Seymour,

Plaintiff/Appellant,

versus

Mr. Haas, et al.,

Defendant/Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(4:92-CV-630-Y)

(April 20, 1995)

Before JOHNSON, WIENER, and STEWART, Circuit Judges.*

JOHNSON, Circuit Judge:

Federal inmate, acting *pro se* and *in forma pauperis*, brought suit against eighteen medical staff members at the Federal Correctional Institution (FCI) in Fort Worth alleging that he was denied appropriate medical treatment for back and leg pain and for respiratory difficulties. The district court granted summary judgment for the defendants holding that inmate had not received constitutionally inadequate medical care. Inmate appeals. Because the appeal is frivolous, it is DISMISSED. See Loc.R. 42.2.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

On January 23, 1992, John Seymour, a federal prisoner, arrived at FCI Fort Worth, a medical facility. Seymour received an initial medical screening the next day which revealed a litany of medical problems which troubled him. Over the next year, Seymour would receive extensive medication therapy, prosthetic therapy, medical testing, lay-ins, and physician referrals regarding his medical complaints. Seymour became dissatisfied with the medical treatment he was receiving, though. Accordingly, he brought suit¹ alleging that he had been deprived of adequate medical attention to his serious medical needs through the deliberate and reckless indifference of the eighteen medical care personnel he named as defendants.²

The defendants filed a motion to dismiss, which, after considering the defendants' affidavits, the district court granted. This Court, however, determined that the district court had converted the defendants' motion into a summary judgment motion by considering evidence outside of the pleadings. As the district court had failed to give adequate notice that it was considering granting summary judgment, this Court vacated the judgment of the district court and remanded.

The district court then gave notice that it would consider the

¹ The petitioner filed his suit under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotic*, 403 U.S. 388, 91 S.Ct. 1999 (1971).

² Seymour sought compensatory and punitive damages against three Bureau of Prisons FCI physicians, one Public Health Service Physician, two private physicians doing contract work for the Bureau of Prisons, and twelve FCI administrative and medical staff personnel.

defendants' motion to dismiss as a summary judgment motion. The court further allowed ample time for the parties to file any summary judgment evidence they wished to have considered.

After considering the motions and affidavits submitted, the district court concluded that Seymour had not received constitutionally inadequate medical treatment. Accordingly, the district court granted summary judgment in favor of the defendants. Seymour now appeals.

II. DISCUSSION

A deliberate indifference to a prisoner's serious medical needs amounts to cruel and unusual punishment under Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 291 (1976). A finding of deliberate indifference, though, "must rest on facts clearly evincing 'wanton' actions on the part of the defendants." *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985).

[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer v. Brennan, ___ U.S. ___, ___, 114 S.Ct. 1970, 1979 (1994); *Reeves v. Collins*, 27 F.3d 174, 176 (5th Cir. 1994) (applying *Farmer* to medical claims). "Unsuccessful medical treatment does not give rise to a section 1983 cause of action. Nor does '[m]ere negligence, neglect or medical malpractice.'" *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (citations omitted).

The summary judgment evidence presented in this case clearly

shows that, far from being indifferent to Seymour's medical needs, the defendants provided Seymour with substantial medical treatment. He was seen dozens of times by numerous doctors and other health care professionals both within and without the correctional facility. He received testing including x-rays, venograms, doppler ultrasonography, an MRI, and a CT scan. The medical care personnel attempted to address his complaints with at least twenty different types of drugs. Finally, Seymour was provided with, among other things, special shoes, support stockings, leg braces and a special mattress to address his complaints about his leg and foot.

It is clear that Seymour does not believe that this treatment was adequate. However, a disagreement between an inmate and his physician as to what medical care is appropriate is actionable only in exceptional circumstances. *Banuelos v. McFarland*, 41 F.3d 232, 235 (5th Cir. 1995). This is not one of those circumstances. Seymour received extensive medical treatment and any deficiencies in that treatment do not even approach the deliberate indifference standard.

III. CONCLUSION

The appeal is DISMISSED as frivolous. See Loc.R. 42.2.