

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10964
Summary Calendar

ANTHONY ARTHUR SORDIA,

Plaintiff-Appellant,

VERSUS

HELEN ORR,
Unit Health Administrator,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(1:94-CV-135-C)

(January 26, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Anthony Sordia appeals the dismissal, pursuant to 28 U.S.C. § 1915(d), of his state prisoner's civil rights action pursuant to 42 U.S.C. § 1983. Finding no reversible error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.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.

Proceeding pro se and in forma pauperis (IFP), Sordia filed his form civil rights complaint, alleging that Helen Orr, a prison employee, denied him nose surgery, despite referral for the same by two physicians, because no dermatologist was available. Sordia stated that denying him nose surgery caused him to suffer wounded pride, human indignity, and pain. Sordia also asserted that his condition, "rosacea," continued to worsen without treatment.

Without conducting a Spears¹ hearing, but after reviewing Sordia's responses to what the district court called a "Watson questionnaire,"² the district court determined that his complaint was frivolous. Specifically, the court concluded that Sordia's injury had already been treated, and the fact that he did not like the treatment he received did not support a cause of action for deliberate indifference to his medical needs. The court added that acne rosacea did not rise to the level of a serious medical need. Thus, the court dismissed the suit as frivolous under § 1915(d).

II.

Sordia challenges the dismissal of his complaint without a Spears hearing. A district court may dismiss an IFP complaint as frivolous under § 1915(d) if it lacks an arguable basis in law or fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). If it appears that "insufficient factual allegations might be remedied by

¹ Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985).

² Watson v. Ault, 525 F.2d 886 (5th Cir. 1976).

more specific pleading," we consider "whether the district court abused its discretion by dismissing the complaint either with prejudice or without any effort to amend."

To state a claim for relief under § 1983 for denial of medical care, a prisoner must show that care was denied or delayed and that this denial or delay constituted deliberate indifference to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). Deliberate indifference encompasses only unnecessary and wanton infliction of pain repugnant to the conscience of mankind. Id. at 105-06. Thus, a prison official or doctor acts with deliberate indifference "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, 114 S. Ct. 1970, 1984 (1994).

It is obvious that Sordia's claim would have no basis in law or fact even if he were given the opportunity for more specific pleading. The district court implicitly treated Sordia's form complaint as such an opportunity, calling it a response to a "Watson questionnaire."

Because it does not appear that Sordia's "insufficient factual allegations might be remedied by more specific pleading," the district court did not reversibly err by dismissing the complaint without affording Sordia any opportunity to amend. The judgment is AFFIRMED.