

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11063

Summary Calendar

JOEL LEE VIOLET,

Plaintiff-Appellant,

versus

DR. JAMES HOLBROOK, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(4:92 CV 023 Y)

July 7, 1995

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Joel Lee Violet appeals the district court's dismissal of his 42 U.S.C. § 1983 action alleging that he was deprived of medical care while a pretrial detainee. We affirm.

He raises four arguments on appeal. First, he contends that the district court erred in granting defendants summary judgment. The district court did not rule on the summary judgment motion. 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

rendered defendants' summary judgment order moot when it granted their motion to dismiss.

We construe Violet's argument to be a challenge to the dismissal order, and we reject his argument that the claim against Dr. Holbrook should not have been dismissed. The standard of medical care to which pretrial detainees are entitled may be unclear,¹ but under no circumstances does negligence suffice to state a § 1983 claim. See Daniels v. Williams, 474 U.S. 327, 332 (1986). Violet concedes that he did receive medical attention from nurses immediately after his seizure, and that officials did transfer him to a medical facility 12 hours later for treatment of his broken hand. His argument that he was not transferred to the hospital quickly enough alleges at best negligence.

We also reject Violet's challenge to the district court's dismissal of Violet's suit against Sheriff Don Carpenter. Violet sued Carpenter because he "is responsible for the Tarrant County jail [where the incident occurred], its facilities and employees." Respondeat superior cannot be a basis for § 1983 liability. See Thompson v. Steele, 709 F.2d 381, 382 (5th Cir.), cert. denied, 464 U.S. 897 (1983).

Secondly, Violet argues that the court should have granted his motion for an extension of time within which to amend his complaint. Violet filed no such motion below. He did file a "Motion for Extension of Time for Plaintiff's Contest of Dismiss or

¹ The en banc court will hear Hare v. City of Corinth, No. 93-7192, which raises this issue, in the autumn of 1995.

for Summary Judgment," which the court construed as a motion for an extension of time within which to file a response to defendants' motion to dismiss or for summary judgment. The court granted that motion. Violet also filed a "Motion Requesting Leave to Amend Contest of Defendants Summary Judgement [sic]," which the court properly construed to be a motion for leave to file an amended response to defendants' motion to dismiss or for summary judgment. The district court granted that motion for leave. The final motion to which Violet refers on appeal is his "Motion Requesting a Continuance to Amend Contest," filed on April 18, 1992. The district court properly construed this motion to be another request for a continuance within which to file an amended response to the motion to dismiss or for summary judgment. Finding a further extension of time unwarranted, the court denied this second motion properly.

Third, Violet challenges the district court's refusal to appoint him counsel under 28 U.S.C. § 1915(d). The court refused to appoint counsel, determining that Violet's case did not involve any complex issues of law and turned on "a relatively simple matter of putting on evidence to support each party's version of the incident made the basis of this suit." We agree with the district court that this case turns on simple factual matters, not fine legal arguments, and that Violet was capable of representing himself.

Finally, Violet argues that the district court erred in entering a protective order in defendants' favor. The district

court did not enter any such order. Although the dismissal order does not state explicitly so, the docket sheet reflects that the court mooted the protective order motions when it granted defendants' motion to dismiss.

Accordingly, we AFFIRM.