

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-20568
Summary Calendar

GLENN STEWART STITT,

Plaintiff-Appellant,

VERSUS

SHERIFF JOHNNY KLEVENHAGEN,

Defendant-Appellee,

and

DEPUTY GOAD,

Movant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(CA-H-93-1241)

(March 8, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Glenn Stewart Stitt filed a civil rights complaint against Harris County Sheriff Johnny Klevenhagen alleging that, while he was housed in the Harris County jail, deputy sheriff Goad beat him without provocation.¹ Stitt admitted that Klevenhagen was not present during the alleged beating, but alleged that Klevenhagen condoned the act because he was aware of the widespread brutality in the jail and failed to correct the problem. Klevenhagen filed a motion to dismiss the complaint, which the district court granted.

This Court reviews a dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) de novo. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). "Unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, the claim should not be dismissed for failure to state a claim." Id. at 284-85 (internal quotation and citation omitted).

Under § 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability. Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). A supervisory official may be held liable if he is personally

¹Although Stitt named only Klevenhagen as a defendant, the district court ordered Goad to be served with the complaint. Goad filed a motion to dismiss the complaint arguing that he was never named as a defendant and that the statute of limitations had expired on the claims against him. The district court granted the motion. Stitt does not appear to challenge this dismissal, and therefore the propriety of this dismissal is not before the Court. See Evans v. City of Marlin, Tex, 986 F.2d 104, 106 n.1 (5th Cir. 1994) (issues not raised or briefed are considered abandoned).

involved in the constitutional violation or there is a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Supervisory liability can exist without overt personal involvement if the supervisor implemented a policy so deficient that the policy "itself is a repudiation of constitutional rights" and is "the moving force of the constitutional violation." Id.

Stitt admitted that Klevenhagen was not personally involved in the alleged beating, and therefore to hold Klevenhagen personally liable, Stitt must allege that Klevenhagen knew of the widespread brutality in the jail, failed to attempt to correct it, and his action or inaction caused Stitt's injury. Thompkins, 828 F.2d at 304. Stitt did allege that Klevenhagen was aware of the widespread abuse at the Harris County jail, failed to take appropriate action to curb the abuse, and therefore condoned the abuse. If Stitt can provide evidence to support these allegations,² he may be able to establish supervisory liability. But see Thompkins, 828 F.2d at 304-05 (the existence of a constitutionally deficient policy cannot be inferred from one wrongful act). The district court prematurely dismissed the complaint against Klevenhagen for failure to state a claim. Fernandez-Montes, 987 F.2d at 284-85 (a Rule 12(b)(6)

²Stitt was ordered to file a more definite statement answering specific questions presented by the magistrate judge. These questions addressed the viability of an excessive-force claim against the officer who allegedly beat him, but did not address Stitt's allegations that Klevenhagen was aware of pervasive abuse and condoned it. On appeal, Stitt has attached articles from the Houston Chronicle which recount other incidents of abuse at the jail.

dismissal is appropriate only if the plaintiff can prove no set of facts to support the claim). The judgment of the district court is vacated and the case remanded for further proceedings.

Stitt has filed two motions requesting that this Court appoint the U.S. Attorney General as counsel for Stitt and a motion for the U.S. Attorney to intervene in his action. There is no authority to support the involvement of the U.S. Attorney General in a lawsuit stemming from a single incident in the Harris County jail, and these motions are denied.

Stitt has also filed a motion for the production of documents. This motion will be construed as motions to supplement the record. This Court "will not ordinarily enlarge the record on appeal to include material not before the district court." United States v. Flores, 887 F.2d 543, 546 (5th Cir. 1989). A review of the record indicates that Stitt never requested the documents in the district court, and this Court will not consider new material for the first time on appeal. This motion is denied. On remand, Stitt can file appropriate discovery motions.

Finally, for the first time on appeal Stitt has filed a one-page document in which he challenges the validity of his conviction. To the extent that Stitt alleges that his conviction is illegal, his appropriate federal remedy is to file a petition for writ of habeas corpus under 28 U.S.C. § 2254. See Clark v. Prichard, 812 F.2d 991, 998 (5th Cir. 1987).

Stitt's motions are DENIED, and the district court's dismissal of Stitt's § 1983 suit is VACATED and REMANDED.