UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-20743
Summary Calendar

RONALD WAYNE WEDDLE,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS, ET AL.,

Defendants-Appellees.

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

(CA-H-91-945)

(April 26, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:[*]

BACKGROUND

On January 2, 1991, Texas state prisoner Ronald Wayne Weddle hit his elbow on a soapdish in the shower and dislodged a bullet which had been lodged in his right arm since 1983. Weddle was examined that day by Betty Taylor, a licensed vocational nurse, who

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

determined that Weddle had no redness or swelling on his arm. Because Taylor did not consider Weddle's complaints to present an emergency, she told him to return to his cell and file a sick call request. Weddle filed a sick call request on January 3 and was examined on January 8 by John Benson, a physician's assistant.

On March 3 Dr. Hung Dao examined Weddle and ordered x-rays. Although the x-rays indicated that no immediate treatment was necessary, Dr. Dao prescribed pain medication for Weddle's subjective complaints of pain. The prescription was renewed on April 12, May 22, and June 25. Because Weddle's arm was inflamed and he continued to complain of pain, Dr. Dao referred Weddle to the University of Texas Medical Branch (UTMB) to have the bullet removed.

Weddle was examined at UTMB on July 12 and the x-rays revealed no underlying bone or joint abnormality but did indicate some impingement of the ulnar nerve. The bullet was removed on August 1. Weddle has not complained of pain since the operation.

Weddle filed a civil rights complaint, 42 U.S.C. § 1983, against James A. Collins[1], director of TDCJ-ID; Wayne Scott, deputy director; Kent Ramsey, regional director; W.C. Warner, senior warden of the Ferguson Unit; Benson; and Taylor, alleging that they denied him adequate medical care in violation of the Eighth Amendment because he was forced to suffer with the painful injury from January 2 through August 1, 1991. Collins, Scott, Ramsey, and

[1] To the extent that James A. Collins was sued in his official capacity, Wayne Scott has been substituted as the proper party.

Warner filed a motion to dismiss, arguing that Weddle's claims against them were based on a theory of respondeat superior which is not available in a § 1983 action. The district court granted the motion as to Collins, Scott, and Ramsey, but denied it as to Warner.

Warner and Taylor filed a motion for summary judgment. The district court granted the motion and dismissed with prejudice the claims against Warner and Taylor. The district court dismissed without prejudice the claims against Benson because Weddle had failed to serve him within 120 days as required by Fed. R. Civ. P. 4(m).

OPINION

Weddle argues that the district court improperly granted summary judgment for Warner and Taylor. This court reviews the district court's grant of summary judgment de novo. Weyant v. Acceptance Ins. Co., 917 F.2d 209, 212 (5th Cir. 1990). The party moving for summary judgment must "demonstrate the absence of a genuine issue of material fact but need not negate the elements of the non-movant's case." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (internal quotations and citation omitted). If the movant fails to meet his burden, the motion should be denied regardless of the non-movant's response. Id. If the movant meets his burden, the non-movant must go beyond the pleading to designate specific facts to show a genuine issue for trial. Id. If the nonmoving party fails to meet this burden, the motion for summary judgment must be granted. Id. at 1076.

To prevail on a medical claim cognizable under § 1983, a convicted prisoner must prove acts or omissions sufficiently harmful to evidence a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106 (1976). A prison official acts with deliberate indifference under the Eighth Amendment "only if he knows that [an] inmate[] face[s] 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); 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 rise to the level of an Eighth Amendment violation. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

The defendants submitted evidence which established that, prior to Weddle's referral to UTMB, his arm was examined on three occasions, x-rays were taken, and pain medication was prescribed to treat his subjective complaints of pain. When Dr. Dao determined that the pain medication was not sufficient to relieve Weddle's subjective complaints of pain, he referred him to UTMB and the bullet was removed. Although Weddle believes that he should not have had to wait for more than two months to receive pain medication and that the bullet should have been removed sooner, his allegations amount to nothing more than disagreement with his

medical treatment and are insufficient to establish an Eighth Amendment claim. See Varnado, 920 F.2d at 321. The district court properly granted Taylor and Warner's motion for summary judgment.

Weddle also argues that the district court improperly granted Collins, Scott, and Ramsey's motion to dismiss. This court reviews de novo a dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). A Rule 12(b)(6) dismissal is appropriate when, accepting all well-pleaded facts as true and viewing them in the light most favorable to the plaintiff, the plaintiff can prove no set of facts that would entitle him to relief. McCartney v. First City Bank, 970 F.2d 45, 47 (5th Cir. 1992).

The district court dismissed the complaint against Collins, Scott, and Ramsey because the claims against them were based on a theory of respondeat superior which is not available in a § 1983 action. Weddle argues, however, that Collins, Scott, and Ramsey were personally involved in his injury because he sent grievances to them and therefore they were aware of his medical problem and failed to take any action to ensure he received proper medical care. Because this court may affirm a judgment on other grounds, see Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (this court may affirm judgment on any basis supported by the record), cert. denied, 113 S. Ct. 1414 (1993), the court need not address whether the responses to the grievances are sufficient to hold these defendants personally liable. See Thompkins v. Belt, 828 F.2d 298, 304 (5th Cir. 1987) (a supervisory official may be liable

if he is personally involved in the constitutional deprivation or there is a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation).

As discussed above, Weddle received constitutionally sufficient medical care. Therefore, even assuming that Collins, Scott, and Ramsey could be held personally liable, Weddle cannot allege a cognizable denial-of-medical-care claim against them. This court will therefore affirm the order dismissing the claims against these defendants.

To the extent that Weddle raises the issue that he was required to do work that aggravated his medical condition, he failed to properly brief the issue and, therefore, this court will not address it. See Yohey v. Collins, 985 F.2d 222, 224-25, (5th Cir. 1993) (issues raised but not briefed are considered abandoned).[2]

AFFIRMED.

[2] To the extent that Weddle raises for the first time on appeal a failure-to-train claim, this court should decline to address it. This court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado, 920 F.2d at 321.