

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20897
Summary Calendar

CHARLES E. BAKER,

Plaintiff-Appellant,

versus

S. YOUNG, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-90-1809)

(August 28, 1995)

Before POLITZ, Chief Judge, JONES and WIENER, Circuit Judges.

POLITZ, Chief Judge:*

Charles Earl Baker, a Texas state prisoner, appeals an adverse summary judgment in his 42 U.S.C. § 1983 suit against prison officials alleging deliberate indifference to his medical needs and retaliation for filing civil actions. Finding no error we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Baker filed suit against a coterie of correction officials,¹ seeking damages and injunctive relief for their alleged failure to provide adequate medical care and for forcing him to perform work tasks which worsened his medical condition. He subsequently amended his complaint to claim retaliation for filing the lawsuit.

The district court initially dismissed the complaint under 28 U.S.C. § 1915(d). On appeal we vacated and remanded as to the medical and retaliation claims.²

On remand the defendants sought summary judgment, attaching to their motion Baker's medical and disciplinary records. Baker made no response and the district court concluded, *inter alia*, that Baker could not prove the requisite deliberate indifference or retaliatory intent. The court granted defendants' motion for summary judgment and Baker timely appealed.

Analysis

We review the grant of summary judgment *de novo*.³ The factual issues which the district court found dispositive deal with the state of mind of the defendants, specifically the lack of

¹The defendants include James A. Collins, Director of the TDCJ; L. Beard, Wynne Unit Warden; M. Liles, Wynne Unit Assistant Warden; Sam Young, an administrator in the Wynne Unit Infirmary; Dr. Charles Adams, prison physician; R. Healy, prison physician's assistant; Annette Harrison and A. McMillin, both nurses; B. Terry, a nurse's aid; and R. Owens and Captain N. Harding, corrections officers.

²**Baker v. Young, et al.**, No. 92-2755 (5th Cir., Aug. 11, 1993) (unpublished opinion). We affirmed the dismissal of an unrelated claim.

³**Weyant v. Acceptance Ins. Co.**, 917 F.2d 209 (5th Cir. 1990).

deliberate indifference or retaliatory intent. While such allegations may be averred generally,⁴ to survive a properly supported motion for summary judgment it is imperative that a section 1983 plaintiff demonstrate, in light of "the substantive evidentiary standard of proof that would apply at the trial on the merits," that "a fair-minded jury could return a verdict for the plaintiff on the evidence presented."⁵

It is now well established that an eighth amendment violation occurs when there is a "deliberate indifference to serious medical needs of prisoners."⁶ To prove such a violation, a plaintiff must show that "the denial of treatment was much more likely than not to result in serious medical consequences" and that the defendants acted with deliberate indifference to the prisoner's plight.⁷ The standard governing this latter determination is a subjective one, requiring a plaintiff to prove that the defendant knew that the plaintiff faced a substantial risk of serious harm and nonetheless disregarded that risk by failing to take reasonable measures to abate it.⁸

⁴Fed.R.Civ.P. 9(b); **Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit**, _____ U.S. _____, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993).

⁵**Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 252 [, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202] ? (1986).

⁶**Estelle v. Gamble**, 429 U.S. 97, _____ [?] (1976).

⁷**Johnson v. Treen**, 759 F.2d 1236, 1238 (5th Cir. 1985). See also **Woods v. Edwards**, 51 F.3d 577 (5th Cir. 1995).

⁸**Farmer v. Brennan**, _____ U.S. _____, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

Baker complains of a veritable litany of medical difficulties including hypertension, hemorrhoids, tuberculosis, vascular disease, a bleeding rectum, and a hole under his tongue. The medical records provided by the defendants reflect that, although tubercular, Baker had completed his treatment for that condition when he was returned to defendants' custody. These records also reflect that by July of 1990 the "hole" under his tongue had healed, that his hemorrhoids and related swelling of his legs were minor, and that he was provided medication for his high blood pressure immediately upon his return to the Wynne Unit. The medical records also reflect that the medical personnel were aware of Baker's vascular disease and instructed him to lower his salt intake, lose weight, and attend a hypertension clinic.

It is apparent from the record that while Baker suffered from numerous maladies, he received extensive medical evaluation and, where appropriate, treatment. As the district court noted, in the month of April he was seen 11 times by medical personnel. Baker's complaints of deliberate indifference to his medical needs actually translates into nothing more than disagreement with the doctors and unhappiness at the results of his treatment.⁹ We likewise find no merit in his claim that he was required to do work tasks which exceeded his medical restrictions. The record before us contains no such evidence.

Nor did the court err in granting summary judgment dismissing the retaliation claim. "The law is well established that prison

⁹**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

officials may not retaliate against or harass an inmate because of the inmate's exercise of his right of access to the courts."¹⁰ To succeed in such a claim a plaintiff must show that "but for" a motive to retaliate against him for the inception of this litigation, the incidents complained of would never have occurred.¹¹ A plaintiff's mere "personal belief that he is the victim of retaliation" will not suffice.¹²

Baker alleges that, in light of his minimum custodial classification, he was on several occasions improperly housed in the company of more dangerous prisoners in retaliation for his having filed several lawsuits against prison officials. He does not specify, however, which of the named defendants was responsible for his supposed plight. The only allegation which even addresses the issue of retaliatory intent concerns the statements of a prison bus driver, not named in this lawsuit, who told Baker he was not liked because he filed lawsuits.

Baker's vague conclusional allegations hinting at some sort of "retaliatory conspiracy" are simply insufficient to pass muster.¹³

The judgment is AFFIRMED.

¹⁰**Gibbs v. King**, 779 F.2d 1040, 1046 (5th Cir.) (citations omitted), cert. denied, 476 U.S. 1117 (1986).

¹¹**Jackson v. Cain**, 864 F.2d 1235 (5th Cir. 1989).

¹²**Woods**, 51 F.3d at 580.

¹³Compare **First National Bank of Arizona v. Cities Service Co.**, 391 U.S. 253 (1968); **Pierce v. Texas Dept. of Crim. Justice Inst. Div.**, 37 F.3d 1146 (5th Cir. 1994).