

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30006
Conference Calendar

CURTIS BROUSSARD,

Plaintiff-Appellant,

versus

C. MARTIN LENSING, Warden,
Hunt Correctional Center,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA 93-798-A-1
- - - - -

(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Curtis Broussard, a Louisiana state prisoner confined at the Hunt Correctional Center (HCC) sued several HCC employees, including the warden and medical personnel, under 28 U.S.C. § 1983 for providing inadequate medical treatment in violation of the Eighth Amendment by ignoring his complaints that his body had become infested with "Micro Scopic Microbes."

A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

complaint is frivolous if it lacks an arguable basis in law or in fact. Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994) (citing Denton v. Hernandez, ___U.S.___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)).

To prove that medical treatment by a prison physician has violated the Eighth Amendment's prohibition against the "unnecessary and wanton infliction of pain," a prisoner must allege acts or omissions by the physician that constitute deliberate indifference to the prisoner's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); Mendoza v. Lynaugh, 989 F.2d 191, 193 (5th Cir. 1993).

A physician's negligent treatment or diagnosis of a medical condition does not constitute a violation of the Eighth Amendment. Facts do not constitute deliberate indifference unless they "clearly evince the medical need in question and the alleged official dereliction." Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (internal quotation and citation omitted). Deliberate indifference entails wanton actions. "Wanton means reckless--without regard to the rights of others Wantonly means causelessly, without restraint, and in reckless disregard of the rights of others." Id. (internal quotation and citation omitted). "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Gamble, 429 U.S. at 106.

Broussard has been seen by medical personnel on multiple occasions, including an ophthalmologist. In effect, Broussard's complaint amounts to a disagreement with his medical treatment.

Such a position does not establish a constitutional violation.
See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Broussard also asserts that his equal protection rights were violated because he was denied a second medical opinion. To demonstrate a violation of Equal Protection, Broussard must "prove purposeful discrimination resulting in a discriminatory effect among persons similarly situated." Muhammad v. Lynaugh, 966 F.2d 901, 903 (5th Cir. 1992). There is no Equal Protection issue because Broussard has not demonstrated that he has been treated differently from similarly situated prisoners.

Johnson's complaint is legally frivolous.

AFFIRMED.