IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30121

DANNY MCCRAY MATHERLY,

Plaintiff-Appellant,

VERSUS

LESLIE PERKINS, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA 93 256 B)

(May 17, 1995)

Before HIGGINBOTHAM, SMITH, and STEWART, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

I.

Danny McCray Matherly, a prisoner in the Dixon Correctional Institute (DCI) in Jackson, Louisiana, filed a pro se civil rights complaint under 42 U.S.C. § 1983 against the following defendants: Leslie Perkins, Director of Nursing at DCI; Marilyn Taylor, Assistant Director of Nursing; Kelly Ward, Deputy Warden at DCI;

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[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

and Dr. Manalac, a physician formerly on the hospital staff at DCI. Matherly alleged that the prison officials denied him a knee brace for his crippled left leg for a period of two years, even though an orthopedist had prescribed the brace.

In his brief, Matherly argues that he suffered pain from his arrival at DCI in November of 1990, through June of 1993, when he finally received the proper knee brace. He states that he fell several times during work assignments because he did not have the brace. Matherly alleges that he repeatedly asked the prison doctor, Dr. Manalac, for a knee brace. To establish a violation of the Eighth Amendment stemming from prison officials' failure to provide proper medical care, deliberate indifference to the prisoner's serious medical needs must be proven. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

The defendants' summary judgment evidence showed that Matherly first requested a knee brace on November 30, 1990, and complained of pain until December 21, 1992, when he was scheduled for an appointment with the Tulane Orthopedic Clinic. Following the orthopedic consultation, a hinged brace was recommended for Matherly's left knee. The warden approved the purchase of a knee brace on January 7, 1993, and Matherly was sent to Lambert's Limb and Brace on January 15, 1993, but would not accept the brace that DCI had ordered because he alleged it was not the proper brace. Matherly continued to complain and was sent back to the orthopedic clinic on March 23, 1993. A hinged brace again was prescribed. On May 20, 1993, the warden approved the purchase of the brace, and

Matherly received the completed brace on June 22, 1993.

II.

Defendants Perkins, Taylor, and Ward filed a motion for summary judgment asserting that Matherly had failed to allege conduct constituting deliberate indifference to his serious medical needs. Matherly opposed this motion. The defendants filed a motion to supplement their motion for summary judgment with an additional affidavit, which the magistrate judge allowed. The magistrate judge found that there was "no evidence that any defendant was deliberately indifferent to the plaintiff's serious medical needs" and recommended that summary judgment be granted.

Matherly objected to the recommendation, and the defendants responded to the objection. Matherly opposed this response. The district court reviewed the entire record and granted summary judgment for the reasons set forth in the magistrate judge's report.

III.

A.

The claim against Dr. Manalac was properly dismissed, as he was never served with a summons or complaint. Under FED. R. CIV. P. 4(m), the court had discretion to dismiss the action with regard to Dr. Manalac after 120 days had passed from the filing of the complaint without service. In his brief, Matherly fails to argue that he had good cause for not serving Manalac or to argue against

dismissal. Although we liberally construe the briefs of pro se appellants, arguments that are not briefed are waived. Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993); Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988).

B.

The claim against Ward likewise is without merit. The only mention of Ward in the fact section of Matherly's brief is an allegation that Matherly sent Ward a letter detailing his medical situation. To be liable under § 1983, either a person must be personally involved in the acts causing the alleged deprivations of constitutional rights, or there must be a causal connection between the act of the person and the constitutional violation to be addressed. Lozano v. Smith, 718 F.2d 756, 768 (5th Cir. 1983). In this case, no causal connection between any act or omission of Kelly's and Matherly's failure to get his leg brace has been alleged.

C.

Perkins allowed Matherly to see a doctor to make his requests for the leg brace. She placed him on light duty assignments whenever he fell. There is no evidence of conduct by Perkins amounting to deliberate indifference.

D.

Taylor gave Matherly a duty status requiring no standing for

more than 30 minutes at a time after he fell in September 1991. She also told the medical supply house not to build the correct brace for Matherly after he claimed one of an incorrect type had been built. Matherly's refusal to take the proffered brace can be viewed merely as a prisoner's disagreement over his health needs, which does not give rise to a § 1983 claim. Vernado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Thus, there is no evidence of deliberate indifference by Taylor.

IV.

Although the delay Matherly experienced in getting the proper brace for his leg is regrettable, he has alleged no facts amounting to any defendant's deliberate indifference to his serious medical needs under the standard of Estelle v. Gamble, 429 U.S. 97 (1976). No evidence of anything more than mere unsuccessful medical treatment, negligence, or medical malpractice has been presented here, and these do not rise to the level of a constitutional violation. Vernado, 920 F.2d at 321. Because the district court properly granted summary judgment as to all defendants, its judgment is AFFIRMED.