

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30450
Conference Calendar

PHILLIP YOUNG,

Plaintiff-Appellant,

versus

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

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 93-CV 803-A

(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Phillip Young, a state prisoner, has applied for leave to proceed in forma pauperis ("IFP") in this appeal from the district court's judgment granting summary judgment for the defendants and dismissing his civil rights action. "To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous." Jackson v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). Young has filed a financial affidavit showing that he is a pauper.

This Court reviews a grant of summary judgment de novo, examining the evidence in the light most favorable to the non-moving party. Abbott v. Equity Group, Inc., 2 F.3d 613, 618 (5th Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994); Salas v. Carpenter, 980 F.2d 299, 304 (5th Cir. 1992). Summary judgment is proper if the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1119 (5th Cir. 1992); Fed. R. Civ. P. 56(c). The party opposing a motion for summary judgment may not rely on mere allegations or denials set out in its pleadings, but must provide specific facts demonstrating that there is a genuine issue for trial. Campbell, 979 F.2d at 1119; Fed. R. Civ. P. 56(e). Although Young did not file any affidavits in opposition to the motion for summary judgment, his verified complaint can be considered as summary judgment evidence to the extent that it comports with the requirements of Fed. R. Civ. P. 56(e). King v. Dogan, 31 F.3d 344, 346 (5th Cir. 1994).

Prison officials violate the constitutional proscription against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, constituting an unnecessary and wanton infliction of pain. Wilson v. Seiter, 501 U.S. 294, 302-03, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991). The facts underlying a claim of deliberate indifference must clearly evince the medical need in question and

the alleged official dereliction. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985); see Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 1979, 128 L. Ed. 2d 811 (1994) (explaining the meaning of the term "deliberate indifference").

Young suggests on appeal that his leg could have been placed in a cast instead of a splint if he had been taken to Earl K. Long Hospital immediately after his accident. Even if this allegation was sufficient, at this juncture, to create a genuine issue whether Young received adequate medical care, it is not material to the question whether the defendants acted with deliberate indifference to Young's medical condition. A mere disagreement with one's medical treatment is not sufficient to state a cause of action under § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Further, mere negligence will not suffice to support a claim of deliberate indifference. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). Miranda v. Munoz, 770 F.2d 255, 259 (1st Cir. 1985), cited by Young, is factually inapposite and is not controlling precedent in this Circuit. Young has failed to show, or even allege, that any of the defendants knew of and disregarded facts from which the inference could be drawn that a substantial risk of serious harm existed. See Farmer, 114 S. Ct. at 1979.

Although Young's district court pleadings raise the issue whether Young was denied his right to due process in connection with the prison grievance procedure, Young has not briefed this issue on appeal. Accordingly, the issue is abandoned. Brinkmann

v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Young has failed to identify a non-frivolous issue for appeal. Therefore, the motion for leave to proceed IFP on appeal is DENIED. See Jackson, 811 F.2d at 261; Fed. R. App. P. 24(a). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.