

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40020
Summary Calendar

VINCENT LEE BAKER,

Plaintiff-Appellant,

VERSUS

UNIDENTIFIED SMITH, M.D., etc., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92-CV-224)

(November 7, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Vincent Lee Baker, a Texas Department of Corrections inmate, appeals the district court's order dismissing his § 1983 suit as frivolous under 28 U.S.C. § 1915. We affirm.

This case is back before us following our remand to the district court. Proceeding **pro se** and **in forma pauperis**, Baker alleged in his original complaint that he was threatened with injury and then actually injured by fellow inmates in a number of

¹ 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

separate incidents. He claimed that he filed grievance forms concerning these incidents with the Warden's office and that the head warden, George Waldron, had received these grievances and had failed to protect him.

Following the district court's dismissal of Baker's complaint as frivolous, we vacated that order and remanded for further consideration. We stated that "[i]f Baker's grievances gave Warden Waldron notice that Baker was in danger of attack by other inmates, and Warden Waldron intentionally or recklessly disregarded these warnings, then Baker may prevail on his claims of deliberate indifference." **Baker v. Smith**, No. 93-4308, slip op. at 3-4 (5th Cir. June 21, 1993).

Upon remand, the magistrate judge held a **Spears** hearing to develop the issue on which we remanded for further factual development. At the hearing, the magistrate judge observed that it appeared that the grievance forms had been signed by Warden White, not Warden Waldron. Warden Waldron testified that the forms had been signed by Warden White and that he had never received them. According to Waldron's testimony, any warden was authorized to sign grievances. Waldron further testified that he had no recollection of any of the incidents described in the grievances and that Baker had never filed a request to speak with him.

In response, Baker argued that only the head warden could sign grievances, or, in the alternative, that as head warden Waldron must have known about the grievances. Baker submitted no evidence to refute Warden Waldron's testimony to the contrary.

A district court may dismiss a pauper's complaint as frivolous under 28 U.S.C. § 1915(d) "where it lacks an arguable basis either in law or in fact." **Denton v. Hernandez**, 112 S. Ct. 1728, 1733 (1992) (quoting **Nietzke v. Williams**, 490 U.S. 319, 325 (1989)). We review a § 1915(d) dismissal for abuse of discretion. **Id.** at 1734. The district court addressed our concern on remand at the expanded **Spears** hearing. Based on the evidence, the district court was entitled to conclude that Warden Waldron had no knowledge of Baker's grievances or the incidents with his fellow inmates about which he complains. The grievance forms were signed by Warden White, in accordance with prison policy. Baker offered no factual or legal basis for his assumption that the head warden must receive all grievances. Because Baker offered no factual or legal support for his allegation that Warden Waldron had knowledge of a risk to Baker's safety, he failed to demonstrate adequately that any injury he received resulted from Waldron's deliberate indifference. **See Farmer v. Brennan**, 114 S. Ct. 1970, 1979 (1994).

AFFIRMED.