IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40055

Summary Calendar

ZACHARY L. KNIGHTEN,

Plaintiff-Appellant,

v.

JAMES A. COLLINS, Director,
Texas Dept. of Criminal Justice,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(93-CV-492)

(July 22, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Appellant Zachary L. Knighten ("Knighten"), an inmate at the Texas Department of Criminal Justice ("TDCJ"), appeals from the dismissal of his complaint under 42 U.S.C. § 1983 against certain TDCJ officials and medical personnel at the TDCJ Michael Unit where Knighten is incarcerated. Finding no error with the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

district court's disposition of the case, we affirm its judgment.

I. Background

Proceeding pro se and in forma pauperis ("IFP"), Knighten filed his civil rights complaint, followed by an amended complaint, against then TDCJ Director James A. Collins and several other officials and medical personnel for their alleged neglect and mishandling of his medical needs. The complaint was referred to the magistrate judge who conducted a Spears[1] hearing to flesh out its factual bases.

At the Spears hearing, Knighten testified, as did Dr. Ford, the TDCJ physician who explained certain passages from the TDCJ medical records on Knighten. Knighten's testimony)) which consisted chiefly of his assent to the magistrate judge's restatement of the facts alleged in his complaint)) established the following. Knighten sustained a gunshot wound to his lower right leg before his incarceration. The injury resulted in a broken leg requiring Knighten to wear a cast on his lower right leg from August 1992 until May 1993. Knighten arrived at the Michael Unit in November 1992. While using crutches or a cane, Knighten slipped and fell twice on the wet and slippery sidewalks and walkways. The first fall occurred in December 1992 and the second on the night of May 5, 1993, in a dayroom commode area with a wet floor. Officer Asberry[2] observed the fall and,

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[1]Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

[2]We use the spelling of names as found in Knighten's amended complaint for purposes of this opinion.

according to Knighten, could have caught him before he hit the floor. Asberry escorted Knighten to Sergeant Atcinson's office. Atcinson asked Knighten if he needed to go to the infirmary, but Knighten declined the offer because, although he was hurting, Knighten believed he would be all right. Later that night, Knighten experienced back pain and a "popping" sensation. According to Knighten, the fall caused him to have a 45-degree stoop to his posture.

Nurse Brown examined Knighten and indicated to him that his back appeared tense, thus requiring an examination by a physician. An appointment with Dr. Raseberry was scheduled for May 28, 1993, but it was cancelled due to the physician's illness, as were two other appointments with this doctor. Knighten testified that he was not examined by a doctor concerning his back until October 8, 1993, although he received pain medication for his leg pain during this period. Dr. Ford was the examining physician at the October 8 appointment. He ordered x-rays which revealed no abnormality.

Knighten alleged that Nurse Warren took away his walking cane on July 16, 1993, when Knighten applied for extension of his cane pass. She did this without a physical examination and before midnight on July 16, the official expiration time of his pass. Knighten was without a cane pass for four days until the pass was renewed for an additional ninety days.

Knighten told the magistrate judge that, after arriving at the Michael Unit and observing the problem with wet, slippery

floors, he wrote the Classification Board and Warden Jimmy Alford requesting temporary removal to a place where he could maneuver more easily. He was informed that his was a medical problem which should be raised with the unit's medical department. The medical department advised him to obtain a certain pass permitting him to shower in the infirmary, which was not issued until after his first fall. Knighten claims he saw no improvement in the infirmary conditions from the regular facilities because the infirmary was also unequipped for handicapped inmates and the floors were just as slippery when wet.

Knighten sued Collins as the official in charge of the entire prison system, who was thus responsible for the safety and care of all inmates. Warden Alford was sued for his failure to fix the water and walkway problems, in light of his responsibility of overseeing the Michael Unit. The Michael Unit medical department and Medical Administrator M. Woodruff were sued by Knighten because of the failure to provide facilities for Knighten's handicap and the failure to provide the needed medical care after his fall. Dr. Raseberry was sued for his failure to provide the necessary medical care. Knighten sued Warren for improperly taking his cane. Sergeant Atcinson was sued for not following procedures after Knighten's fall on May 5, 1993, because he failed to write an accident report, to insist that Knighten go to the infirmary, and to take action about the wet floor after the fact.

The magistrate judge dismissed, with prejudice, the complaint as frivolous, concluding that the facts alleged no more than negligence, disagreement with medical treatment, and violation of TDCJ rules. Knighten filed this appeal directly from that judgment.[3]

II. Analysis

A. Alleged Procedural Errors in the Magistrate Judge's Orders

Knighten raises two issues concerning the propriety of the magistrate judge's orders. First, he argues that the order of dismissal failed to mention the Michael Unit's medical department listed by Knighten as one of the defendants; therefore, he concludes, his complaint against this defendant is still pending. A review of the magistrate judge's order and final judgment indicates that the complaint was dismissed as to all parties and consequently that this argument has no merit.

Knighten also argues that the magistrate judge erred by not allowing him to amend his complaint with his August 2, 1993, amended complaint. Federal Rule of Civil Procedure 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ." Fed. R. Civ. P. 15(a). Knighten's motion to

[3] After the testimony was completed at the hearing, the magistrate judge informed Knighten of his option to sign a consent form to authorize the magistrate judge to conduct all further proceedings in the case. Both Knighten and counsel for the defendants executed the consent forms, which are contained in the record, agreeing that the magistrate judge could enter any order and that any appeal would be to this court.

amend his complaint was filed before the district court referred the case to the magistrate judge, and there is no indication that the magistrate judge did not utilize the amended complaint which had been filed as a result of the application of Rule 15(a).

Knighten may be confused about the magistrate judge's orders signed October 7 and 26, 1993, respectively. In the October 7 order, the magistrate judge construed a letter from Knighten received by the court on October 1, 1993, as a motion to supplement his complaint by adding a retaliation claim to his suit. She denied the motion without prejudice to Knighten's right to file such a claim as a separate complaint. In response, Knighten filed an "affidavit" in which he stated he was not trying to add a retaliation claim, but that he wanted to amend his complaint. In her order of October 26, 1993, the magistrate judge denied his motion to amend because Knighten failed to attach a copy of the second amended complaint. The order explained to Knighten that he could file another motion with the appropriate attachments. The record does not include subsequent motions filed by Knighten, nor did Knighten orally move to amend his complaint at the Spears hearing. Therefore, we do not find that the magistrate erred with respect to these rulings.

B. Dismissal under § 1915(d)

An IFP complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992). This Court reviews the dismissal for abuse of discretion. Id. at 1734. Substantively, Knighten alleges three

different instances of constitutional deprivation.

1. Eighth Amendment claims

Knighten contends that his alleged facts raised several constitutional violations as to his medical care and the unsafe conditions from the slippery, wet walkways. "The Eighth Amendment prohibits punishment that is unnecessary and wanton infliction of pain. Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain and states a cause of action under 42 U.S.C. § 1983." Walker v. Butler, 967 F.2d 176, 178 (5th Cir. 1992) (citation omitted). The deliberate indifference standard also applies to other types of conditions-of-confinement claims, such as unsafe walkways. See Wilson v. Seiter, 501 U.S. 294, 303-04 (1991).

> [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn . . . and he must also draw the inference.

Farmer v. Brennan, 62 U.S.L.W. 4446 (U.S. June 6, 1994) (to be reported at 114 S. Ct. 1970).

Knighten argues that the medical care he received violated his constitutional rights because (i) he was not examined by a physician regarding his back injury until five months after the injury, although he concedes that he was seen by medical personnel during this period, (ii) the medical defendants failed to send him to a specialist, (iii) he was denied effective

treatment for his back, and (iv) they ignored his complaints of pain and his stooped posture. The medical records confirm Knighten's concession of having received medical treatment, with supervision by physicians, from May through October, 1993. Knighten's facts do not rise to the level of deliberate indifference because, at most, the facts indicate negligence or medical malpractice, which are insufficient to state an Eighth Amendment claim. See Estelle v. Gamble, 429 U.S. 97, 105-06 (1976); Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

2. Failure to follow TDCJ regulations

Knighten argues that Sergeant Atcinson violated his constitutional rights in failing to follow TDCJ safety procedures by not ordering Knighten to the infirmary, by not filing an accident report, and by not attending to the hazardous, wet flooring after the fact. Violations of TDCJ regulations, without more, do not state a constitutional violation. See Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986). Moreover, Atcinson's failure to act amounts to no more than negligence. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

Knighten contends that the magistrate judge's order of dismissal failed to address his claim concerning the unsafe conditions of his confinement. He argues that he has stated a constitutional violation by alleging that the floors are very slippery when wet, that he has fallen twice, and that nothing has been done about this hazard. In his brief, Knighten relies upon a TDCJ manual adopting state and federal safety regulations as

requirements for every TDCJ facility. As previously stated, the violation of prison regulations, without more, does not give rise to a civil rights claim. See Hernandez, 788 F.2d at 1158. Moreover, Knighten attached to his original complaint copies of his grievance and its appeal concerning the slippery, wet flooring. The warden's decision denying the grievance indicated that unit officials were aware of the water problem, that corrective measures were scheduled, and that interim measures had been implemented to prevent harm. As such, the failure of unit officials to fix the water problem amounts to no more than negligence. See Jackson, 864 F.2d at 1246.

3. Claims under the Rehabilitation Act

To the extent that Knighten argues that the failure of TDCJ officials to provide adequate facilities for handicapped inmates at the Michael Unit violates the Rehabilitation Act, 29 U.S.C. § 794, his argument is misplaced. Knighten's alleged disability consisted of wearing a temporary leg cast and using crutches or a cane due to a broken leg from a gunshot wound inflicted before his incarceration. Even assuming that the Rehabilitation Act applies and that he properly raised this federal statutory claim, Knighten is not considered handicapped under the Act. See De la Torres v. Bolger, 781 F.2d 1134, 1137-38 (5th Cir. 1986) (giving overview of caselaw interpreting the definitions of "handicapped individual" and "impairment" under 29 U.S.C. § 706(7)).

Knighten's claims therefore lack an arguable basis in law. See Neitzke v. Williams, 490 U.S. 319, 327 1989). For the above-

stated reasons, the magistrate judge did not abuse her discretion in dismissing the complaint as frivolous. See Denton, 112 S.Ct. at 1734.

III. Conclusion

For the foregoing reasons, we AFFIRM the dismissal of Knighten's § 1983 suit.