

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-40320

Summary Calendar

LASHUNE ANN HICKS,

Plaintiff-Appellant,

VERSUS

SHAW, et al,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(6:93-CV-548)

(October 20, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This is an appeal from a judgement that dismissed with prejudice appellant's civil rights suit against certain Tennessee Colony prison officials. The judgement is modified without prejudice to Appellant's limited right to refile against proper defendants, but is otherwise affirmed.

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS AND PROCEDURAL HISTORY

In September 1993, Lashune Ann Hicks filed suit pursuant to 42 U.S.C. § 1983 against the following prison officials at the Tennessee Colony prison: Warden James Shaw, Assistant Warden H. Kinker, Major J. Duke, Mr. Bill Layton, and Dr. Ford. Hicks alleged that these officials placed him in a work classification that exposed him to excessive heat where he could have had an epileptic seizure. The magistrate judge ordered a Spears hearing.

At the hearing, Hicks consented to have his case tried before the magistrate judge. Hicks claimed that he suffered from a brain tumor, epilepsy, kidney disease, and infection with the HIV virus. Dr. Ford testified that Hicks's work classification reflected Hicks's seizures, HIV status, and infection with hepatitis B and C.

Hicks testified that, at the time of the hearing, he was working in records conversion, which involved typing names and addresses on state records such as automobile titles and tax records in an air-conditioned environment. Hicks alleged that he was in the fields when the weather was hot and that he had a seizure out in the fields.

Hicks stated that he sued Wardens Shaw and Kinker because they were in charge of his unit. Hicks admitted that he had never met Major Dukes and stated that he sued Dukes because Dukes was one of the people in charge. Hicks explained that he sued Bill Layton because Layton was in charge of the medical department and because Layton did not respond to his requests to be taken out of the fields.

Dr. Ford explained that Layton was the hospital administrator and that Layton had nothing to do with inmate work classifications. Dr. Ford then stated that Hicks was assigned to work on a medical ward where sudden loss of consciousness would not be dangerous and that Hicks's medical classification was later changed to reflect Hicks's contagious diseases.

Hicks stated that he sued Dr. Ford because he had sent the doctor sick call requests and the doctor would not help him get reassigned out of the fields. Hicks stated that he felt that whoever put him out in the fields was trying to cause him permanent injury and that he had no idea who was responsible. Hicks also alleged that the work on the medical squad was harder than the work on the regular squads.

The magistrate judge granted Hicks leave to proceed in forma pauperis. The magistrate judge found that Hicks failed to show that the defendants assigned him to a work detail with knowledge that Hicks's medical condition would be worsened or with deliberate indifference to Hicks' medical needs. Moreover, the magistrate judge also found that Hicks failed to show any personal involvement on the part of the defendants in supervisory positions and that Dr. Ford was not responsible for Hicks's work assignment. The magistrate judge concluded that Hicks' claims lacked an arguable basis in law or in fact and dismissed the suit pursuant to 28 U.S.C. § 1915(d).

NO ABUSE OF DISCRETION

Hicks argued that the magistrate judge abused his discretion in dismissing his suit. A § 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A 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, 118 L. Ed. 2d 340 (1992)).

The pith of Hicks's argument is that, because of his epilepsy, he should not have been assigned to work in the fields. Prison officials violate the Eighth Amendment 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, 297, 302-05, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

Requiring a prisoner to do work that officers know will aggravate a serious medical condition is cruel and unusual. Jackson v. Cain, 864 F.2d 1235, 1245-46 (5th Cir. 1989). But appellant does not claim that any defendant required him to do work in violation of a medical restriction. Hicks's complaint is about his past work assignment. Dr. Ford testified that Hicks's work assignment in the fields was compatible with his classification at that time, which took into account Hicks's epileptic seizures. When the medical staff became aware of Hicks's infection with HIV and hepatitis B and C, Hicks was reclassified to reflect these afflictions and was apparently transferred to his current job assignment.

Hicks admitted that defendants Shaw, Kinker, Duke, and Layton had no personal involvement in his suit. Hicks does not argue that Dr. Ford was deliberately indifferent in diagnosing Hicks's work restrictions. (Dr. Ford testified that, although he made medical classifications, he did not make work assignments). A defendant cannot be held liable under § 1983 on a theory of vicarious liability, including respondeat superior. Baskin v. Parker, 602 F.2d 1205, 1207-08 (5th Cir. 1979). "Personal involvement is an essential element of a civil rights cause of action." Thompson v. Steele, 709 F.2d 381, 382 (5th Cir.), cert. denied, 464 U.S. 897 (1983). The trial court correctly dismissed the claims against the named defendants.

MODIFICATION AS TO PROPER DEFENDANTS

Hicks argues that his claims could have been substantiated with further discovery and that the dismissal was, therefore, premature. A Spears hearing serves the purpose of "flesh[ing] out the substance of a prisoner's claims" and is "in the nature of a motion for more definite statement." Wesson v. Oglesby, 910 F.2d 278, 281 (5th Cir. 1990) The purpose of the Spears hearing is not to address the merits of the complaint but to focus on the legal viability of the allegations. Id. Hicks's claims concerning the nature of his initial job classification lack legal viability.

In contrast, Hicks's allegation that he was left in the fields after he was diagnosed with HIV may have merit. The record reflects that there may have been some delay removing Hicks from

the fields after his medical classification was changed to reflect his contagious diseases (records reflect positive HIV test result on August 2, 1993, but Hicks complained about working in the fields on August 10, 1993). Thus, Hicks may have a viable constitutional claim that officials violated his constitutional rights leaving him in the fields. Reeves, 27 F.3d at 176 (citing Farmer, 114 S. Ct. at 1981-82 and n.8). The trial court dismissed with prejudice as to the refiling of another lawsuit raising the same claims as presented therein. Appellant's latter claim would be barred under the judgement entered below. We modify the judgement to be without prejudice so that Hicks would not be prevented from raising this latter claim against a proper defendant.

As modified, the judgement of dismissal is AFFIRMED.