

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40613
Conference Calendar

GLENN STEWART STITT,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director, TDCJ, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:93-CV-404
- - - - -

(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Glenn Stewart Stitt filed an in forma pauperis civil rights complaint, 42 U.S.C. § 1983, alleging that he received negligent medical care. Unsuccessful medical treatment, negligence, neglect, and even medical malpractice do not state a claim under § 1983. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Stitt also argued that he was intentionally misdiagnosed and mistreated. To state a medical claim cognizable under § 1983, a convicted prisoner must allege acts or omissions sufficiently

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

harmful to evidence a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). A prison official acts with deliberate indifference under the Eighth Amendment "only if he knows that [an] inmate[] face[s] a substantial risk of serious harm and [he] disregards that risk by failing to take reasonable measures to abate it." Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 1984, 128 L. Ed. 2d 811 (1994); see Reeves v. Collins, 27 F.3d 174, 176-77 (5th Cir. 1994) (applying the Farmer standard in the context of a denial-of-medical-care claim).

The records establish that Stitt has had several prostate examinations which were normal. There is also no support in his medical records for his contention that he is suffering from bone cancer. To the extent that he argues that the doctors have refused to x-ray his arm, this argument evidences nothing more than disagreement with the doctors' diagnoses and treatment, and does not establish deliberate indifference under the Eighth Amendment. See Varnado, 920 F.2d at 321. Stitt has not shown that Dr. Kuykendall was deliberately indifferent to Stitt's concern about prostate and bone cancer.

Finally, to the extent that he argues that he has not received adequate treatment for his back and shoulder pain, the medical records establish that he has been given physical therapy and pain medication for these injuries. He cannot establish Dr. Kuykendall was deliberately indifferent because the doctor was unable to "cure" Stitt of the pain.

Stitt also argues that the district court improperly denied his motion for appointment of counsel. The district court properly denied the motion because Stitt, who is no stranger to pro se litigation, has demonstrated that he is capable of representing himself, and the factual and legal issues in the case were not complex. This case did not present such exceptional circumstances that required appointment of counsel. Ulmer v. Chancellor, 691 F.2d 209, 212-13 (5th Cir. 1982).

The district court has the discretion to appoint an expert witness if a party is indigent and cannot pay the expert's fee. Fed. R. Evid. 706; see also Fugitt v. Jones, 549 F.2d 1001, 1006 (5th Cir. 1977). Stitt requested that the district court appoint an expert to testify about violations of the Clean Air Act. The district court did not abuse its discretion by denying the motion because the testimony was irrelevant to the issues presented.

AFFIRMED.