

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50123
Conference Calendar

BLIDE BRYANT, JR.,

Plaintiff-Appellant,

versus

J. DAYLE LANCASTER, M.D.
Physician for the Fort
Stockton Detention Center,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. M-94-CV-46
- - - - -
(July 28, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Blide Bryant, Jr., appeals the dismissal of his civil rights action against Dr. J. Dayle Lancaster, a physician at the Pecos County Detention Center (PCDC). According to Bryant, Dr. Lancaster prescribed him a low-salt diet in August 1993, but the PCDC did not begin providing him with such a diet until November 1993. Bryant asserts that he has high blood pressure.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A 28 U.S.C. § 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).

If Bryant was a convicted inmate, his claim would fall under the Eighth Amendment and he would have to allege acts or omissions by Lancaster that constituted deliberate indifference to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). If he was a pretrial detainee, his right to medical care would fall under the Due Process Clause of the Fourteenth Amendment, and he would have to show that Lancaster failed to provide him with reasonable medical care, unless the failure to supply that care was reasonably related to a legitimate government objective. Rhyne v. Henderson County, 973 F.2d 386, 391 (5th Cir. 1992). City of Revere v. Massachusetts Gen. Hospital, 463 U.S. 239, 244 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). An allegation of negligence alone cannot support a due process violation. Ortega v. Rowe, 796 F.2d 765, 767-68 (5th Cir. 1986), cert. denied, 481 U.S. 1013 (1987).

According to Bryant's allegations, Dr. Lancaster responded to Bryant's medical needs and told him not to add salt to his diet. Bryant does not assert that Lancaster neglected his medical condition or purposefully instructed him to consume the PCDC's food knowing that it was high in salt. Rather, Bryant asserts that Lancaster diagnosed his condition, made an appropriate notation in his medical record, provided the PCDC's

officials with a doctor's order to provide Bryant with a low-salt diet, and told Bryant not to add salt to his diet. Bryant's complaint at most states that Dr. Lancaster was negligent for not exercising greater oversight over his diet. These allegations reflect neither deliberate indifference to a serious medical need nor the failure to provide reasonable medical care.

Bryant's general claim of unconstitutional prison conditions under Ruiz v. Estelle is raised for the first time on appeal and we decline to consider it. Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988).

The district court's dismissal is AFFIRMED. Bryant's motion for leave to amend his request for relief and his "motion to suppress" are DENIED as unnecessary.