

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50176
Summary Calendar

WILLARD M. SIMMONS,

Plaintiff-Appellant,

versus

O.A. BROOKSHIRE, Sheriff of
Ector County, Texas, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Texas
(M-93-CV-207)

(November 4, 1994)

Before GOLDBERG, JOLLY, and JONES, Circuit Judges.

PER CURIAM:*

This appeal comes to us from the Western District of Texas, challenging the grant of summary judgment for the defendants. The appellant, plaintiff below, filed a civil rights claim under 42 U.S.C. § 1983 alleging that his civil rights had been violated by officials of the Ector County Jail. Finding that the appellant's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pleadings did not present a genuine issue of material fact, we affirm the district court's ruling.

BACKGROUND

On September 22, 1993, Willard M. Simmons filed a civil rights action against Bob Brookshire, Sheriff of Ector County, Texas, and Captain Carlos Padilla, administrator of the Ector County Jail, pursuant to 42 U.S.C. § 1983. Simmons' complaint alleged that he had been placed in solitary confinement as a disciplinary measure without notice or an opportunity to be heard. The complaint also alleged that he was deprived of all telephone, commissary and visitation privileges and that he was not given clean bed sheets nor cleaning materials for his cell. Finally, Simmons alleged that in the eight months he was confined in the Ector County Jail he was not permitted to exercise outside his cell, was forced to sleep on the floor, was not permitted to shower, and that when he was permitted to shower, the showers in the jail were rusty.

The defendants filed a motion to dismiss Simmons' complaint or, alternatively, a motion for summary judgment. The magistrate assigned to the case conducted an evidentiary hearing where both sides presented witnesses. Based on this hearing the magistrate issued a report recommending that the defendant's motion for summary judgment should be granted. The district court adopted the recommendations of the magistrate and dismissed the case. Simmons' now appeals the district court's ruling.

DISCUSSION

Simmons named Brookshire in his complaint, alleging that as sheriff of Ector County and administrator of the Ector County Jail, Brookshire was aware of the ill treatment that Simmons' was receiving and was therefore culpable, ostensibly on a theory of respondeat superior. Simmons did not allege that Brookshire had any personal involvement in the incidents making up the substance of Simmons' complaint. A defendant is not subject to liability under § 1983 on a theory of vicarious liability. Baskin v. Parker, 602 F.2d 1205, 1207-08 (5th Cir. 1979). Because nothing in the record indicates that Brookshire was personally involved with Simmons' alleged deprivation, he was entitled to summary judgment as a matter of law.

Simmons also named Padilla as a defendant. Simmons claimed that Padilla was the prison authority that put him in solitary confinement and engineered his other deprivations. During the magistrate's hearing, Padilla admitted moving Simmons to a single cell, but he claims to have done so for administrative reasons. Prison officials have the authority to transfer an inmate to more restrictive quarters for nonpunitive reasons. Mitchell v. Sheriff Dep't, Lubbock County, Texas, 995 F.2d 60, 63 (5th Cir. 1993). Padilla also claimed he did not recall anyone denying Simmons' visitation rights.

We have held that the party seeking to avoid summary judgment must present specific evidence that creates a genuine issue of material fact, or at least identify how additional

discovery would yield such an issue. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 28 F.3d 1388, 1396 (5th Cir. 1994). This evidence must have some present, existential character. Rule 56(e) requires a nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial. We have held firmly that a party opposing summary judgment may not rest upon mere allegations or denials set forth in his pleadings. Nowlin v. Resolution Trust Corp., 1994 U.S. App. Lexis 27,362 *18 (5th Cir. Tex. Sept. 29, 1994).

Simmons presented no evidence in support of his claim. He was permitted to subpoena records and witnesses, and yet this did not provide any evidence that a genuine issue of material fact existed. The only evidence Simmons produced was his own testimony reiterating the allegations found in his complaint, and the testimony of Marcella Harper, Simmons' mother. Harper testified that, at the time Simmons complained of being moved to solitary confinement, she received a call from another inmate at Ector County Jail informing her that her son had been moved to a different room. This testimony offers Simmons little shelter since it is completely consistent with the claims of Padilla that Simmons was moved for administrative reasons.

Because the appellant did not come forward with any evidence to support his claim, beyond that which he stated in his complaint,

the grant of summary judgment against him was not improper. The decision of the district court is AFFIRMED.