

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50356

Summary Calendar

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PERCY JAMES LEGGETT,

Plaintiff-Appellant,

versus

JOHN C. SPARKS, RALPH E. LOPEZ, and  
CYNDI T. KRIER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(SA-94-CV-27)

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(October 18, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Percy Leggett, an inmate at the Bexar County jail, filed this civil rights suit pro se, alleging inadequate ventilation and medical care. The district court dismissed the case and granted judgment for defendants.

The facts alleged by Leggett show at most negligence, rather than the deliberate indifference needed to make out an Eighth

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Amendment challenge. See Farmer v. Brennan, 114 S. Ct. 1970, 1979, 1981-82 & n.8 (1994). There is no allegation that defendants knew or must have known of the health risk posed by the unsafe ventilation conditions. Nor is the alleged denial of medical care sufficient; uncontroverted evidence showed that Leggett received repeated dental treatment and was hospitalized for ten days for the laceration on his forehead, after which he filed no further medical grievance for months.<sup>1</sup> Even if Leggett qualifies for the Fourteenth Amendment's protection of pretrial detainees rather than the Eighth Amendment's protection of convicted criminals, his allegations of mere negligence are insufficient. See Bell v. Wolfish, 441 U.S. 520, 535, 538-39 (1979).

Leggett claims that the jail had few guards, had little food, was cold, and made him sleep on the floor. He says that defendants did not respond to discovery requests. Because he raises these issues for the first time on appeal, we will not consider them.

Leggett claims that he was denied his Seventh Amendment right to a jury trial, but by not timely demanding a jury he waived that right. He complains that no attorney was appointed for him, but

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<sup>1</sup>The district court had pending before it motions to dismiss and Sparks' motion for summary judgment. Leggett had notice of the motion for summary judgment and an opportunity to respond. He did respond, filing two pleadings in opposition to the motion for summary judgment and attaching two affidavits from fellow prisoners. Though the district court denominated its judgment as dismissing for failure to state a claim, we affirm the dismissal with respect to Sparks on the basis that summary judgment would have been appropriate. See Booker v. Koonce, 2 F.3d 114, 117 n.18 (5th Cir. 1993). We affirm the dismissal with respect to the other two defendants because, as discussed in the text, the allegations concerning them failed to state a claim on which relief could be granted.

the district court did not abuse its discretion by denying counsel in this simple case. Leggett moved to strike appellees' brief as untimely, but we DENY this motion since the brief was timely filed. Finally, his motion to file a supplemental brief requesting additional discovery and his motion to compel surrender of records are DENIED as moot because we AFFIRM the district court's judgment.

The judgment below is AFFIRMED; all other motions are DENIED.