**UNITED STATES COURT OF APPEALS**
**For the Fifth Circuit**

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**No. 94-50584**

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**GREGORY HOUSE,**

**Plaintiff-Appellant,**

**VERSUS**

**MARK A. HILL, ET. AL.**

**Defendants-Appellees.**

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Appeal from the United States District Court
for the Western District of Texas

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August 8, 1996

Before DUHÉ, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

Gregory House, proceeding pro se and in forma pauperis (IFP) in the district court, filed this civil rights action under 42 U.S.C. § 1983 against several employees at the Hughes Unit of the Texas Department of Criminal Justice (TDCJ), alleging that they required him to work in violation of his work restrictions.

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* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

After twice being remanded by this Court, the case proceeded to a jury trial. At the conclusion of House's evidence, the defendants moved for judgment as a matter of law, which the district court granted because House had failed to offer evidence to satisfy the elements of his claim. The district court entered judgment in favor of the defendants. This Court provisionally granted IFP status and ordered a transcript of the trial. For the following reasons, we AFFIRM.

## FACTUAL BACKGROUND

At trial, House subpoenaed two inmate witnesses who had worked with him, Dextouris Williams and Arthur Lee Lewis. Williams testified that he recalled hearing House complain to the field officer, Lieutenant Hill, about his back. Lewis recalled hearing House complain to Lieutenant Hill and Sergeant Phillips about his back while House was in the field "flatweeding"[1] or picking up rocks.

Defendants, Joe A. Alfred, John P. Gearhart, Mark K. Rainwater, Mark Hill, Douglas Phillips, and Sandra Robertson, all correctional officers employed by TDCJ, were subpoenaed for trial. House conducted direct examination of these defendants as part of his case. Hill, Phillips, Rainwater, and Gearhart all denied any recall of House's alleged complaints regarding his medical problems

[1] "Flatweeding" refers to cutting grass with a hoe.

while working in the field. Robertson recalled that, on a few occasions, House failed to report to work because his back allegedly hurt. She testified, both on direct and cross-examination, that she told House he could not refuse to work without a “lay-in,” and that he should send an “I-60" request to the medical department. She also testified that she checked his classification to determine his work restrictions, and that his assignment to the “06-hoe squad” was within his medical lifting restriction of 50 pounds.

After House completed his examination of Lewis for a second time, the district court asked House if he had another witness, to which House responded, "No. sir. That about wraps it up there." The record indicates that House rested his case and the court entertained a motion for a judgment as a matter of law by defendants. In support of their motion, defendants argued that House had failed to present any medical testimony about his alleged medical condition, and that he had failed to present any evidence that the type of work which he was required to perform significantly worsened his condition. The defendants also noted that, at trial, House had failed to even mention some of the defendants. As for defendants Hill, Phillips, and Robertson, defendants argue that the evidence presented against them did not allow a jury to find that they were deliberately indifferent.

The district court granted defendants’ motion, noting that House had failed to present any evidence that he ever lifted

anything over 50 pounds, that he had a serious medical condition, or that the type of work assigned significantly worsened his medical condition. In its written order, the district court stated that House had failed to offer any evidence to satisfy his burden of proof on this claim.

## DISCUSSION

House argues that the district court abused its discretion in granting the defendants' motion for judgment as a matter of law. He states that he injured his back in an automobile accident before he was incarcerated, that he continues to have pain, and that he was given a 50-pound lifting restriction. He further contends that the testimony showed that "weight limitations that were faced by him often exceeded those medical limits," citing to testimony by Williams and Lewis that they sometimes lifted such weights. He also states that the medical squad, of which he was apparently a part, was required to flatweed at a pace set by the field officers, and that he had complained to the officers about his injuries.

House contends that the district court rested his case prematurely and without determining if he had additional evidence to present. He further contends that the record clearly establishes that he attempted to present documentary evidence, but that he was hindered from doing so because of his lack of trial

experience. House asserts that, although the defendants had provided him with his medical records, his lack of legal knowledge prevented him from knowing how and when to offer them into evidence. House contends that Robertson would write-up an inmate for a disciplinary infraction based upon his work limitation records, rather than based upon any actual injury; Robertson's conduct, House asserts, establishes deliberate indifference. House also argues that it was obvious to the district court that House did not have knowledge of courtroom procedure; therefore, House argues, the district court should have, at least, asked House if he had any further evidence to offer before closing his case and considering the defendants' motion.

This Court reviews a district court's grant of a Rule 50(a)[2] motion for judgment as a matter of law de novo, using the same standard applied in the district court. **RTC v. Cramer**, 6 F.3d 1102, 1109 (5th Cir. 1993). The evidence and all reasonable inferences therefrom are considered in the light most favorable to the party opposing the motion. **Id**. This Court will affirm the granting of the motion if the facts and inferences point so

[2] Rule 50(a)(1) states: "If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim ... that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Fed. R. Civ. P. 50(a)(1).

strongly and overwhelmingly in favor of the moving party that the reviewing court believes that reasonable jurors could not have arrived at a contrary verdict. **Id**. However, if there existed substantial evidence of such quality and weight that reasonable people might have reached differing conclusions, the motion should have been denied. **Portis v. First Nat'l Bank of New Albany, Miss.**, 34 F.3d 325, 327-28 (5th Cir. 1994).

The Eighth Amendment's prohibition against "cruel and unusual punishment" protects House from improper medical care only if the care is "sufficiently harmful to evidence deliberate indifference to serious medical needs." **Estelle v. Gamble**, 429 U.S. 97, 106 (1976). As the Supreme Court recently said:

> Our cases have held that a prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious. The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment. To violate the Cruel and Unusual Punishments Clause, a prison official must have a sufficiently culpable state of mind. In prison-conditions cases that state of mind is one of deliberate indifference to inmate health or safety.
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> .....
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> We hold ... that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm

> exists, and he must also draw the inference. This approach comports best with the text of the Amendment as our cases have interpreted it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments."
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> .....
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> But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

**Farmer v. Brennan**, 114 S. Ct. 1970, 1977-79 (1994) (internal citations and quotations omitted). Allegations that prison officials required an inmate to work in violation of medical restrictions, or to do work which aggravates a serious medical condition (and punishes the inmate for refusal to do such work), knowing that a medical condition precludes such work, do state a claim under § 1983. See **Jackson v. Cain**, 864 F.2d 1235, 1246 (5th Cir. 1989); **Mendoza v. Lynaugh**, 989 F.2d 191, 194 (5th Cir. 1993). "[T]he constitutionality of a particular working condition must be evaluated in the light of the particular medical conditions of the complaining prisoner." **Jackson**, 864 F.2d at 1246. "If prison officials knowingly put [House] on a work detail which they knew would significantly aggravate his serious physical ailment such a decision would constitute deliberate indifference to serious medical needs." **Id**.

In its written order, the district court stated that House must prove each of the following three elements by a preponderance

of the evidence: (1) that the defendant acted with knowledge of, and deliberate indifference to, plaintiff's condition; (2) that plaintiff's medical condition is a medically serious one; and (3) that the type of work assigned to plaintiff worsened his medical condition. The district court held:

> The plaintiff has wholly failed to offer evidence to satisfy any of the three prongs, thereby entitling the defendants to judgment as a matter of law. The plaintiff's proof as to the first prong came close to withstanding this motion as to one defendant because of defense counsel's cross-examination, but the evidence failed to rise to the level necessary to go to the jury. The plaintiff's proof also failed in that he offered absolutely no documentary evidence, and his pleadings are not sufficient standing alone. Therefore, the Court has no choice but to grant the defendants' motions, and dismiss this case with prejudice.

The district court's statement of law as to the elements that House must prove is not incorrect. While it may not track the language of **Farmer** exactly, it does sufficiently reflect the law as enunciated by **Farmer**.

Based upon the record before us, we hold that the district court did not err in finding that judgment as a matter of law was appropriate. First, House did not present evidence which would allow a reasonable jury to find that the deprivation alleged was objectively and sufficiently serious; House failed to present any evidence of his medical condition, or that his work assignment significantly aggravated his condition. Additionally, House failed to present any evidence that he was ever required to lift anything

over 50 pounds. While Williams and Lewis may have testified that they sometimes lifted bags of rocks or produce weighing over 50 pound, there is no evidence in the trial record that House, himself, lifted anything over 50 pounds.[3] Furthermore, there is no evidence that any of the defendants knew of and disregarded an excessive risk to House's health or safety. Thus, based upon the trial record, we cannot hold that the district court erred in granting judgment as a matter of law in favor of defendants.

For these reasons, the judgment of the district court is AFFIRMED.

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[3] For some inexplicable reason, House did not testify at trial as to his experiences or medical condition. Neither did he offer his medical records into evidence, which could have established the nature of his back condition. On appeal, he states that he had such medical documentation with him at trial, but that he did not understand how to get it into evidence. He argues that an appointed counsel would have ensured that his evidence was properly offered, and that the district court erred when it failed to grant his request for one. While we do not dispute House's contention that an appointed counsel could have provided him with assistance, we also recognize that a pro se litigant will almost always benefit from the assistance of a licensed attorney. However, in this Circuit, "the trial court is not required to appoint counsel for an indigent plaintiff asserting a claim under 42 U.S.C. § 1983 unless the case presents exceptional circumstances." **Ulmer v. Chancelor**, 691 F.2d 209, 212 (5th Cir. 1982). House has not show that his case presents exceptional circumstances. Accordingly, we hold that the district court did not err in denying House's request for appointed counsel.