UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-60004
Summary Calendar

JOSE RENE MARTINEZ, JR.,

Plaintiff-Appellant,

VERSUS

PHARR-SAN JUAN-ALAMO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

No. 94-60798
Summary Calendar

JOSE RENE MARTINEZ, JR.,

Plaintiff-Appellee,

VERSUS

PHARR-SAN JUAN-ALAMO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
CA M 90 223

June 16, 1995

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:[1]

---

[1] 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

In these consolidated matters Jose Rene Martinez Jr. appeals the district court's grant of summary judgment in favor of all defendants in his 42 U.S.C. § 1983 suit. Defendants appeal the district court's denial of their request for attorney's fees. We affirm both decisions.

These claims arise from a tragic accident on the grounds of a high school in the Pharr-San Juan-Alamo Independent School District and the ensuing investigation by the school authorities and local police.

A special education student was chasing Appellant Martinez and two of his friends on the school ground during lunch time. The special education student fell striking his head causing injuries from which he later died at the hospital to which he had been promptly removed by ambulance. Assistant Principal Daniel was responsible for school security. Principal Farias put Daniel in charge of investigating the incident while Farias attended to matters pertaining to the dead student. Daniel called police. He had armed uniformed school security guards remove Martinez from his classroom and bring him, and other students, to Daniel's office where they were questioned by Daniel outside the presence of the security guards.

Police officers took Martinez to the station for further questioning without a warrant. Daniel did not object to this and may even have suggested it.

---

should not be published.

Daniel made no effort to notify Martinez's parents that their son was being taken from the school to the police station.

At the station, Martinez asked police for permission to call his mother but his request was denied. When the questioning was concluded the police returned Martinez to school but he had missed the bus which he usually rode. Instead of arriving at home at approximately 3:30 PM as was normal, he did not arrive until 5:30 or 6:00.

When he arrived home, Martinez related these events to his mother and that he might be going to jail for killing the other student. He became ill and was taken to the hospital emergency room. He was diabetic and this information was available to Assistant Principal Daniel who did not make it available to the police. Martinez never complained to school or police officials about feeling ill or having any health problem. No one observed him experience a health problem.

Upon Martinez' return to school following the incident, other students made derogatory remarks to him and a coach referred to him as having killed the other student. He received threatening telephone calls. Assistant Principal Daniel made no effort to restrain other students remarks to Martinez who became depressed, performed poorly academically, and dropped out of school.

The foregoing is a brief summary of the undisputed facts. We do not recite the facts in more detail, simply because, for purposes of this opinion which is solely to inform the parties to the litigation of the reasons for our determination, this

recitation is adequate. We have, however, reviewed the record in this case and the briefs of the parties in great detail.

Martinez sued Principal Farias, Assistant Principal Daniel and the District. Following a hearing, the district court granted summary judgment finding that Appellant had created no fact issue as to any constitutional violation; that the individual defendants Farias and Daniel were entitled to qualified immunity, and that the Appellant had made no showing that the school district had a custom or policy compelling or approving the alleged improper conduct.

To defeat the Defendants' claim of qualified immunity and to state a claim under § 1983, Appellant must identify a constitutional violation. Walton v. Alexander, 44 F.3d 1297, 1301 (5th Cir. 1995) (en banc). To defeat the motion for summary judgment on his claim that he was deprived a protected liberty interest, Appellant must identify a liberty interest protected by the Fourteenth Amendment and raise an issue of material fact concerning whether a state actor intentionally or recklessly deprived him of that interest. Id. at 1301-02.

The only allegation Appellant makes about Principal Farias's involvement in the events is that he placed Assistant Principal Daniel in charge. Appellant attributed to Farias no personal involvement in the allegedly injurious events. There is no vicarious liability under § 1983. Leffall v. Dallas Indep. Sch. Dist., 521, 525 (5th Cir. 1994). Summary judgment as to Principal Farias was obviously proper.

To defeat summary judgment in favor of the school district Appellant must establish that it had a custom or policy that resulted in the injury. Leffall, 28 F.3d at 525. Appellant relies

on his claim that Assistant Principal Daniel violated the school district's established custom and policy of notifying parents before releasing a student to the police during school hours. Viewed in the light most favorable to Appellant, the evidence simply shows that the school officials attempt, as often as they can, to notify parents under these circumstances. This does not create an issue of fact about whether there is a custom and policy established by the school board. Additionally, Appellant does not allege that violation of this supposed custom or policy, if it did exist, resulted in any injury to Martinez.

Nor has Appellant successfully raised a material issue of fact concerning a "special relationship" between himself and the school board or school personnel. Even if such relationship exists, the harm resulting from a supervisory failure must be the result of deliberate indifference to the welfare of the person in custody. Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 454 (5th Cir. 1994) (en banc), cert. denied, 115 S.Ct. 70 (1994). The record is devoid of any issue of fact showing deliberate indifference on the part of Defendants. Even if Appellant could show that Daniel was deliberately indifferent to the remarks made by the coach and students to Martinez, and that such remarks were injurious to Martinez, this would constitute damage to his reputation which is not constitutionally actionable unless it is tied to some more tangible interest, such as employment. Paul v. Davis, 424 U.S. 693, 711-12 (1976); Thomas v. Kippermann, 846 F.2d 1009, 1010 (5th Cir. 1988). No such issues of fact are raised. There is no discernable basis for liability on the part of the school district.

Nor has Appellant created an issue of fact as to how Daniel's removal of Martinez from the classroom and questioning him violated a liberty interest. He has shown no deliberate indifference to his welfare exhibited by Daniel in taking this action. See Doe v. Taylor, 15 F.3d at 454; Ramie v. Hedwig Village, 765 F.2d 490, 492-93 (5th Cir. 1985); cert. denied, 474 U.S. 1062 (1986).

The same is true for the claims made as a result of Daniel's failure to telephone Martinez's parents or to advise the police of his diabetic condition or of permitting the police to remove him to the police station for questioning. There is no evidence adduced indicating that any of these things were the result of deliberate indifference to Martinez's physical condition or liberty interests. Of course, whatever may have occurred after Martinez was taken into the police station for questioning can bring no liability upon school officials. Jennings v. Joshua Indep. Sch. Dist., 877 F.2d 313, 316 (5th Cir. 1989), cert denied, 496 U.S. 935 (1990).

Because Martinez creates no issue of fact concerning a constitutional violation, the doctrine of qualified immunity is applicable.

Likewise the Defendant's contention that the district court erred in denying their motion for attorney's fees is without merit. Under § 1988 prevailing Defendants may be awarded attorney's fees only if an underlying claim is frivolous, unreasonable, or groundless. This claim was none of these and the district court did not err in so concluding.

AFFIRMED.