

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60410
Summary Calendar

THOMAS C. SAWYER, JR.,

Plaintiff-Appellant,

versus

JAMES T. HICKEY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(90 CV 175)

July 10, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Sawyer, now an inmate at TDCJ but formerly a prisoner at Nueces County Jail, filed a pro se § 1983 suit alleging that prison officials locked him in an unlit shower-cell where he fell and injured himself and that he received inadequate medical treatment for his injuries. The district court determined that Sawyer had not alleged a cognizable constitutional injury with

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

respect to his claim that the accident was the result of dangerous conditions at the jail and that Sawyer's inadequate-medical-treatment claim was not supported by the evidence in the record. Accordingly, the court granted defendants' motion for summary judgment and denied relief on the constitutional claims while dismissing Sawyer's pendent state-law tort claim. On appeal, we find no error in the judgment.

Sawyer first contends that the defendants' conduct in ordering him to take a shower in an un-lit shower cell constituted deliberate indifference to his safety and deprived him of a liberty interest in freedom from bodily injury.

At issue is whether Sawyer has alleged sufficient facts to demonstrate that defendants acted with the requisite culpability to make out an eighth or fourteenth amendment violation. At a Spears hearing, Sawyer testified that on March 8, 1990, the date of the alleged accident, Sawyer was incarcerated in the maximum security wing of Nueces County Jail. At around 8:30 p.m., he was escorted by two prison guards to a shower cell. As the guards were about to close the shower door, Sawyer noticed that the light in the shower was not working, and he requested to be taken to another shower. He was told that he could not leave the maximum security area. Sawyer then requested that the door to the shower be left open. One of the guards left to see if this suggestion was acceptable. He returned and told Sawyer that he had to be locked in the shower cell for security reasons. Sawyer then fell in the shower, injuring his back and neck. Sawyer stated that the shower

cell had bars of soap, wet newspaper, and shampoo bottles on the floor and that it was the responsibility of the prison guards to clean it out. In a pleading opposing the defendants' motion for summary judgment, Sawyer also stated that another inmate had fallen in the same shower cell prior to Sawyer's accident.

The conduct of prison officials, as alleged by Sawyer, does not rise to the required level of culpability. In light of the fact that Sawyer was a maximum-security prisoner, prison officials acted reasonably in not allowing him to shower with the cell door open. To the extent that they failed to provide Sawyer with a clean and properly lit shower cell, which resulted in his slip and fall, their conduct was, at most, merely negligent and therefore not actionable under the due process clause.

With regard to Sawyer's claim for the denial of medical care, the defendants submitted affidavits and medical records demonstrating that Sawyer was seen repeatedly by prison and hospital doctors, given x-rays, and medicated for back pain following his injury. Sawyer has made no showing of deliberate indifference on the part of the defendants. At most, he has shown that he was not given a heating pad and did not receive a specific type of treatment, physical therapy, until some nine months after the accident. This is not sufficient to establish a genuine fact issue whether an Eighth Amendment violation occurred. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Thus, the district court did not err in granting summary judgment for the defendants.

Sawyer also argues that the district court abused its

discretion in denying his third motion for order compelling discovery. The district court's decision to curtail discovery is granted great deference, and thus is reviewed by this court for an abuse of discretion. Wichita Falls Office Assoc. v. Banc One Corp., 978 F.2d 915, 918 (5th Cir. 1992), cert. denied, 113 S. Ct. 2340 (1993). Sawyer requested information through discovery on several inmates who allegedly "witnessed" his slip and fall, one inmate who allegedly fell in the same shower prior to Sawyer's fall, and various Nueces County prison officials. Although he asserts a right to compel this discovery Sawyer fails to indicate how this information could have rebutted the defendants' summary-judgment evidence. Accordingly, Sawyer has not demonstrated that the district court abused its discretion in implicitly denying his motion to compel discovery.

Sawyer raises other complaints about discovery matters in the district court, but these are all without merit.

The judgment of the district court is **AFFIRMED**.