

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60822
Summary Calendar

GLEN EUGENE ODEM,

Plaintiff-Appellant,

VERSUS

MAURICE HOOKS,
SHERIFF OF JONES COUNTY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(2:92-CV-25PS)

(June 8, 1995)

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Glen Odem appeals the dismissal of his civil rights action.
Finding no error, we affirm.

Odem sued Maurice Hooks, sheriff of Jones County, Mississippi,
seven of his present or former deputy sheriffs, and five members of
the Jones County Board of Supervisors. Odem seeks compensatory and

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

punitive damages for the injuries he allegedly sustained while in the Jones County Jail. He alleges violations of 42 U.S.C. §§ 1981, 1982, 1983, 1986, 1987, 1988; the First, Fifth, Sixth, Eighth and Fourteenth Amendments; and Mississippi tort law.

I.

Odem was transferred from the Central Mississippi Correctional Facility, where he was serving a twenty-year sentence for a drug conviction, to the Jones County Jail to await trial on additional drug-related charges. Odem was placed into Bullpen 1, a section of the jail that housed fourteen inmates, when the incident allegedly occurred. One toilet and shower serviced Bullpen 1. The toilet had been broken for some time.

At approximately 2:00 a.m. on January 16, 1991, Odem picked up a mop bucket full of water to pour into the toilet to make it flush. He felt a shock and experienced pain in his lower back. Another inmate helped him to his bunk. Odem believes that he reported the injury to a guard. He was examined in the jail by Dr. Sergio Gonzalez on January 18.

Gonzalez diagnosed Odem's injury as a muscle strain and prescribed a muscle relaxer. The medication was dispensed from January 19 until January 30, but Odem refused to take it. On January 30, he was taken to the Laurel Bone and Joint Clinic and examined by Dr. Cleve Johnson.

Odem's x-rays of the lumbosacral spine and cervical spine were normal. Johnson prescribed a muscle relaxer, Soma compound, which

was later dispensed to Odem. He advised Odem to obtain a lumbosacral corset in the next week and to return in ten days. When Odem returned to Johnson on February 13, Johnson told him to wear a lumbosacral corset and to return in two weeks if he failed to improve. His diagnosis remain unchanged. Johnson noted that if Odem did not improve, he would send him to a neurosurgeon.

Odem was seen again by Gonzalez in March. According to the jail log, Odem did not request further medical treatment. He was transferred out of the jail on April 3.

II.

Following a bench trial before a magistrate judge, the court rendered judgment in favor of the defendants. The court determined that Odem was not a pretrial detainee because he was presently incarcerated on a prior conviction. Applying an Eighth Amendment analysis, the court determined that Odem had not shown that the defendants possessed the "requisite culpable state of mind necessary to prove a constitutional deprivation" or that they had shown "deliberate indifference to his serious medical needs or to his welfare and/or safety." The court further stated that Odem "wholly failed to present any evidence" that the defendants knew of the broken toilet, how long it had been broken, or whether they had shown deliberate indifference to the need to repair it.

III.

Odem contends that the court erred when it concluded that he

was not a pretrial detainee. He argues that the defendants admitted that he was a pretrial detainee in a response to his request for admissions and that as a result, the defendants and the court were bound by this admission.

A case in which a magistrate judge enters judgment pursuant to 28 U.S.C. § 636(c) is reviewed under the same standard of review afforded rulings by a district judge. Rhodes v. Guiberson Oil Tools Div., 927 F.2d 876, 879 (5th Cir.), cert. denied, 502 U.S. 868 (1991). Findings of facts are reviewed for clear error; matters of law are reviewed de novo. See FED. R. CIV. P. 52; Valencia v. Wiggins, 981 F.2d 1440, 1449 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). The clearly erroneous standard requires affirmance if the district court's account of the evidence is plausible in light of the record viewed in its entirety, notwithstanding that the court of appeals might have weighed the evidence differently to reach a different conclusion had it been sitting as the trier of fact. Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985).

Odem submitted the following request for admission to the appellees: "During his incarceration in the Jones County Jail, from December 21, 1990, through April 2, 1991, Plaintiff was a pretrial detainee." The defendants responded: "Admitted, as the Plaintiff was convicted and sentenced to the Mississippi Department of Corrections to serve a sentence of three (3) years on April 2, 1991." The defendants did not request that the court withdraw or amend their admission. Such an admission is conclusively estab-

lished, and it "cannot be rebutted by contrary testimony or ignored by the district court." FED. R. CIV. P. 36(d); American Auto. Ass'n v. AAA Legal Clinic, 930 F.2d 1117, 1120 (5th Cir. 1991). Accordingly, the court likely erred by not finding, in accordance with the admission, that Odem was a pretrial detainee.

Even if Odem is treated as a pretrial detainee, as he urges, we must affirm the judgment, as Odem's federal claims nevertheless fail.¹ See Sojourner T. v. Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (holding that we may affirm judgment on any basis supported by the record), cert. denied, 113 S. Ct. 1414 (1992); see also Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987) (holding that where magistrate judge applied incorrect standard, judgment could be affirmed on other grounds).

1.

Claims asserted by a pretrial detainee are reviewed under the Fourteenth Amendment to determine whether the conditions of his confinement amounted to punishment. See Bell v. Wolfish, 441 U.S. 520, 535, 538 (1979) (holding that pretrial detainee may not be

¹ Odem challenges three "findings" by the district court as clearly erroneous because the court determined that Odem was a convicted prisoner and, thus, applied incorrect legal standard. Odem disputes (1) that the back pain did not constitute a serious medical need; (2) that Odem failed to establish the requisite culpable state of mind or that the defendants exhibited deliberate indifference to his serious medical needs or welfare; and (3) that Odem failed to prove that the defendants knew of the broken toilet, how long it had been broken, and whether the defendants showed deliberate indifference to its need of repair.

The first two challenged findings, regarding "serious medical need" and "deliberate indifference," concern legal principles that are relevant in an Eighth Amendment analysis. Because we may affirm based upon a Fourteenth Amendment analysis, we need not address these challenges. The third challenge, regarding the defendants' conduct, is addressed below in the context of Fourteenth Amendment due process guarantees.

punished prior to an adjudication of guilt); Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993).

Odem contends that his injury arose out of and was cause by substandard plumbing conditions. The magistrate judge, however, determined that the defendants' evidence and testimony were more credible than Odem's. The magistrate judge, sitting as the trier of fact, is entitled to make credibility determinations. "`An appellate Court is in no position to weigh conflicting evidence and inferences or to determine the credibility of witnesses; that function is within the province of the finder of fact.'" Martin v. Thomas, 973 F.2d 449, 453 n.3 (5th Cir. 1992) (quoting Staunch v. Gates Rubber Co., 879 F.2d 1282, 1285 (5th Cir. 1989), cert. denied, 493 U.S. 1045 (1990)). We will declare testimony incredible as a matter of law only "when testimony is so unbelievable on its face that it defies physical laws." United States v. Casteneda, 951 F.2d 44, 48 (5th Cir. 1992) (internal quotation and citation omitted).

The record supports the finding that the defendants did not intentionally fail to repair the toilet in order to punish Odem. Frederick Johnson, who was present in Bullpen 1 when the incident occurred, testified that the toilet would stop up about three or four times a month. He stated that it would be repaired as soon as a plumber could get there, which was normally a day, or two or three days, but no longer than three days. Officer Lafayette Nelson, the jail administrator who worked on January 14-16, 1991, testified that he inspected the jail cells when he arrived each

morning, that each cell was cleaned every day, and that any plumbing problems were reported immediately to maintenance personnel, who in turn would contact Walters Plumbing, who had contracted with the sheriff to repair the plumbing.

Nelson stated that he noted no plumbing problems recorded in the jail log on January 15, but there was a note to him when he arrived on the morning of January 16 requesting that he call a plumber because the toilet in Bullpen 1 was broken. According to the log, the plumber arrived at 8:55 a.m. on January 16 and finished his repairs about 9:07 a.m.

Nelson's testimony is not incredible as a matter of law. The evidence establishes that the defendants repaired the toilet in a reasonable and timely manner. Because Odem has not shown that the condition of the toilet amounted to punishment, there is no due process violation. To the extent that Odem has alleged that the appellees were negligent, he has not stated a civil rights violation. Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989) (holding that negligence alone will not support an action under § 1983).

2.

Odem argues that the appellees deprived him of adequate, necessary medical care. He contends that both he and his family repeatedly requested that he be allowed to see Dr. Johnson or be referred to a neurosurgeon following his February 13 examination by Johnson.

A pretrial detainee's medical care could be classified as unreasonable if he advised jail officials of his need for medication or treatment and "they did not have him examined or otherwise adequately respond to his requests." Thomas v. Kippermann, 846 F.2d 1009, 1011 (5th Cir. 1988). The due process clause is not implicated by mere negligence, however. Daniels v. Williams, 474 U.S. 327, 328 (1986) (prisoner civil rights case); see also Feagley v. Waddill, 868 F.2d 1437, 1440 (5th Cir. 1989) (Fourteenth Amendment due process claim brought by estate of involuntarily committed retarded person). A detainee's medical care is reasonable when he received legitimate and continuous treatment, even if the treatment is unsuccessful. Mayweather v. Foti, 958 F.2d 91, 91 (5th Cir. 1992).

Odem's argument on appeal focuses upon the treatment he received after his second examination by Johnson on February 13. According to the jail log, Odem went to the jail's After Hours Clinic on March 1, and he saw Gonzalez on March 26.² The log does not indicate that Odem requested any additional treatment. Odem was transferred out of Jones County Jail on April 3 and later released from prison in February 1993.

After his release from prison in February 1993, Odem did not seek medical treatment until April 1994, when he went to Dr. Charles Krieger, Jr., an orthopedic surgeon. Krieger examined Odem on two occasions and diagnosed a herniated disc and a degenerative

² The trial court found that Odem saw Gonzalez on March 6. Based upon the undisputed evidence in the record, this appears to be a typographical error.

disc disease. Krieger found no neurological damages, prescribed no medication, did not recommend hospitalization, and did not schedule a return appointment. Krieger advised that Odem exercise to strengthen his back and lose weight. Krieger's report supports the trial court's determination that there was no medical necessity for treatment, and it is consistent with the complete absence in the jail log of any request for additional treatment.

Odem relies upon Hathaway v. Coughlin, 37 F.3d 63 (2d Cir. 1994), cert. denied, 115 S. Ct. 1108 (1995), to argue that his herniated disc was a serious medical condition warranting medical treatment. In Hathaway, the prisoner suffered from a degenerative hip condition that required corrective surgery. There was no dispute that Hathaway experienced great pain over an extended period. In contrast, there is little documentation supporting Odem's pain, and his condition required neither surgery nor medication.

B.

Odem contends that the district court erred in failing to find the defendants negligent under Mississippi tort law. He argues that the defendants breached their duty to provide adequate plumbing and sanitation and to provide him with adequate, necessary medical care.

A district court may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3);

Rhyne v. Henderson County, 973 F.2d 386, 395 (5th Cir. 1992) (in which court declined to adjudicate state claims after directing verdict for defendant on federal claims). In the present case, the district court did not address Odem's state law claims; it simply dismissed the suit in its entirety with prejudice.

Odem apparently submitted "Proposed Findings of Fact and Conclusions of Law" prior to trial that raised his state law claims. The magistrate judge acknowledged receiving the document and stated that he had read it. Because Odem's state law claims apparently were before the court, the dismissal of his entire suit indicates that the court at least implicitly declined to exercise supplemental jurisdiction over the state law claims. But cf. Albany Ins. Co. v. Anh Thi Kieu, 927 F.2d 882, 894 (5th Cir.) (noting that this court has "not discovered any authority for the proposition that the absence of a ruling on a party's claim is a denial of the claim by implication"), cert. denied, 502 U.S. 901 (1991). We decline to remand, as Odem has failed to show that the district court abused its discretion in declining to exercise its supplemental jurisdiction. Accordingly, we affirm the dismissal of the state law claims.

The judgment, however, dismissed all of Odem's claims with prejudice. His state law claims should have been dismissed without prejudice under these circumstances. See Hamill v. Wright, 870 F.2d 1032, 1038 (5th Cir. 1989) (modifying dismissal of state law claim to be without prejudice, except as to filing in federal court). The judgment is hereby modified accordingly.

The judgment is MODIFIED to be without prejudice as to the state law claims. As so modified, the judgment is AFFIRMED.