

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50671
Summary Calendar

JUNIOR EARL ROBERTSON,

Plaintiff-Appellee,

versus

BERNEY KESZLER, Dr.

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No.SA-98-CV-295-JWP

April 10, 2000

Before DAVIS, EMILIO M. GARZA and DENNIS, Circuit Judges.

PER CURIAM:*

Dr. Berney Keszler appeals the denial of his motion for summary judgment in which he asserted qualified immunity from the claims of a Texas inmate, Junior Robertson, for the denial of adequate medical care and for retaliation. This court has jurisdiction to review whether the issues of fact identified by the district court are material. Colston v. Barnhart, 146 F.3d 282, 284 (5th Cir.), denying petition for rehearing en banc, cert. denied, 119 S. Ct. 618 (1998).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court determined that genuine issues of material fact existed whether Dr. Keszler denied Robertson medical care between April 22 and May 5, 1997, and whether Dr. Keszler retaliated against Robertson because Robertson complained about Dr. Keszler. Our review of the record confirms that material issues of fact do exist. See Farmer v. Brennan, 511 U.S. 825, 839-41 (1994); Estelle v. Gamble, 429 U.S. 97, 104 (1976); McDonald v. Steward, 132 F.3d 225, 231 (5th Cir. 1998). Accordingly, the district court's denial of Dr. Keszler's motion for summary judgment is AFFIRMED.