IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5200
Summary Calendar

CARL LESTER WALKER,

Plaintiff-Appellee,

versus

BILL OLDHAM, Individually and as
Sheriff of Harrison County, Texas,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Texas
(2:91 CV 49)

(June 25, 1993)

Before JOLLY, BARKSDALE, and E. GARZA, Circuit Judges.

PER CURIAM:*

I

In this appeal, Harrison County, Texas sheriff, Bill Oldham, contends that he is immune from suit in both his individual and official capacities from this § 1983 suit brought by Carl Walker, and that the district court therefore should have granted his

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

summary judgment motion. We find Oldham's contention is unavailing.

Under the doctrine of qualified immunity, a defendant sued in his individual capacity is not subject to suit unless he violates a federal right that was "clearly established" at the time of the alleged injury. Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). "[A] district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable `final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment." Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). "[T]he district court's denial of a motion for summary judgment because of the perceived lack of qualified or absolute immunity constitutes an appealable `final judgment' only if . . . the immunity defense turns upon an issue of law and not of fact." Stem v. Ahearn, 908 F.2d 1, 3 (5th Cir. 1990), cert. denied, 111 S.Ct. 788 (1991). (Emphasis ours.) Because the legal characterization of all of Walker's claims depends on factual determinations, we conclude that we lack jurisdiction over Oldham's appeal.

II

Arrest Claim

Oldham first contends that he was entitled to summary judgment on Walker's contention that the deputies arrested him without probable cause on the afternoon of April 20, 1989. Oldham contends

that the deputies did not arrest Walker, but instead they placed him in protective custody because they believed him a threat to himself and others. Although the legal characterization of Walker's seizure may be irrelevant for constitutional purposes, it nevertheless depends on a factual determination of what happened on April 20. With respect to a traditional arrest, "`there is no cause of action for `false arrest' under section 1983 unless the arresting officer lacked probable cause.'" Fields v. City of South Houston, 922 F.2d 1183, 1189 (5th Cir. 1991). "Probable cause to arrest exists when the facts and circumstances within the knowledge of the arresting officer are sufficient to cause a person of reasonable caution to believe that an offense has been or is being committed." U.S. v. Antone, 753 F.2d 1301, 1304 (5th Cir.), cert. denied, 474 U.S. 818 (1985).

With respect to seizure of a mentally ill person, our research discloses no cases in which this court has previously addressed the question. Other courts, however, hold that a civil commitment is a "seizure" subject to the Fourth Amendment and that probable cause is required for such a seizure. Villanova v. Abrams, 972 F.2d 792, 795 (7th Cir. 1992); Gooden v. Howard County, 954 F.2d 960, 968 (4th Cir. 1992)(en banc); Maag v. Wessler, 960 F.2d 773, 775 (9th Cir. 1991); see Chathas v. Smith, 884 F.2d 980, 987 (7th Cir. 1989), cert. denied, 493 U.S. 1095 (1990). The Fourth Circuit has held that police must have probable cause to believe an individual dangerous before they may arrest him. Gooden, 954 F.2d at 968.

In this appeal--limited to the question of qualified immunity--we need not decide the standards applicable to seizures of the mentally ill because a material factual dispute exists whether Walker was arrested or placed in protective detention, and whether he was seized on probable cause. Walker, who had been earlier arrested and released on bail on charges of sexual assault of his stepdaughter, swore that he was not intoxicated and was not threatening suicide when Lovett and the deputies arrived at his residence. He also swore that he did not consent to be placed in protective custody. Constable Danny Lovett swore that Walker was calm. Oldham swore that Lovett and the deputies "found Walker sitting on the ground with a bottle of tequila and a loaded sawed-off shotgun." He also swore that Walker agreed to be placed in protective custody. The arresting deputy wrote in the arrest report that Walker was "leaning on a lawn mower drinking Tequila [and] had a sawed off shotgun loaded with one shell [and] a telephone on the other side." The deputy wrote that "Walker was taken into protective custody so no harm would come to him." These variances between Walker and Oldham and other authorities create fact issues that make summary judgment inappropriate, and indeed leave us without jurisdiction to decide the immunity question.

III

Detention Claim

Oldham next contends that he was entitled to summary judgment on Walker's contention that he was held from April 20 to April 25 without a hearing before a judicial officer. Oldham contends that Walker was held for that five-day period because Clay Allen, president of the bail bond agency, was in the process of seeking release from Walker's bond, which had been made in connection with the earlier arrest--apparently a local custom of accommodating the bondsman. Oldham does not contend that Walker received a hearing during that period.

"[T]he Fourth Amendment requires the States to provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty. The probable-cause determination `must be made by a judicial officer either before or promptly after arrest.'" Baker v. McCollan, 443 U.S. 137, 142-43, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979)(citation omitted). Since 1991, with some limited exceptions, the probable cause determination must be made within 48 hours after the arrest. County of Riverside v. McLaughlin, ___ U.S. ___, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). If Walker's seizure was a traditional criminal arrest, as Walker alleges, then his averment that he was held for five days without a probable cause determination is sufficient to withstand a motion for summary judgment.

This court previously has not addressed the continuing detention of mentally ill individuals. Other circuits, however, hold that authorities may detain briefly a person believed to be dangerous and in need of mental treatment before giving him a full-scale hearing. See Lynch v. Baxley, 744 F.2d 1452, 1461 (11th Cir. 1984). The constitutionality of such a detention is subject to the constraints of the Due Process Clause. Villanova, 972 F.2d at 797; Maag, 960 F.2d at 775. Because there exists a material factual issue about why Walker was detained, we need not decide in this appeal the standards applicable to the continuing detention of the mentally ill.

Moreover, "`once a state makes provisions for . . . bail, the Eighth and Fourteenth Amendments require that it not be denied arbitrarily or unreasonably.'" Young v. Hubbard, 673 F.2d 132, 134 (5th Cir. 1982)(citation omitted). The state court may require a defendant rearrested and a new bond given if there exists "any . . . good and sufficient cause[.]" Tex. Crim. Code Ann. art. 17.09, § 3 (West 1977). See Meador v. State, 780 S.W.2d 836, 837 (Tex. Ct. App. 1989). The summary judgment materials indicate a material factual dispute regarding whether Oldham violated Walker's right to non-arbitrary operation of Texas' bail provisions. Walker contends that he was arrested without probable cause and held for five days without a probable cause determination. Assuming, without deciding, that Oldham is correct when he asserts that Walker was held because Allen sought to be relieved from his bond,

it is possible that Walker was denied his right to non-arbitrary operation of Texas' bail provisions, and consequently suffered a violation of his federal constitutional rights, as noted above.

IV

Medical Care Claim

Oldham next contends that he was entitled to summary judgment on Walker's contention that he was deprived of reasonable medical care while in jail. The summary judgment materials indicate a material factual dispute regarding Walker's jailhouse diet. "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective." Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987). "The inquiry . . . `is whether the denial of medical care was objectively reasonable in light of the Fourteenth Amendment's guarantee of reasonable medical care and prohibition on punishment of pretrial detainees.'" Fields, 922 F.2d at 1191 (quoting Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1990)). A detainee's medical care could be unreasonable, for example, "if he told jail authorities that he needed his prescribed medication . . . and if they did not have him examined or otherwise adequately respond to his requests," Thomas v. Kipperman, 846 F.2d 1009, 1011 (5th Cir. 1988); or if officials knew of a serious medical condition and did nothing about it. Fields, 922 F.2d at 1191; Pedraza v. Meyer, 919 F.2d 317, 319 (5th Cir. 1990).

Walker has sworn that he told his jailers that he is diabetic and that "[w]hen plaintiff requested a proper diet, the Harrison County jailer(s) indicated the jail's policy was that all prisoners were to receive the same diet." Oldham did not counter those factual allegations. Walker alleges that he informed his jailers of a serious medical condition and that they, solely because of jail policy, refused to respond to that condition. If Walker's allegations prove true, then he may be able to recover under § 1983, see Fields, 922 F.2d at 1191, and, thus, Oldham's claim of immunity once again turns on a fact question.

V

Official Capacity Claim

Oldham contends that the district court erred by not granting summary judgment for him on Walker's claims against him in his official capacity. Qualified immunity is not at issue regarding those claims. Denial of Oldham's motion for summary judgment regarding those claims thus is not yet appealable. See Simpson v. Hines, 903 F.2d 400, 404 (5th Cir. 1990).

VI

Walker's Claim

Finally, Walker contends that the district court erred by denying his motion to compel Oldham to be deposed by Walker. Walker has filed no notice of cross-appeal and therefore is not an appellant. See Fed. R. App. P. 4(a)(3). In any event, however, "orders denying or directing discovery are interlocutory and are

not appealable except as part of the final decision disposing of the case on its merits[.]" In re Sessions, 672 F.2d 564, 566 (5th Cir. 1982). This court therefore lacks jurisdiction to entertain Walker's contention.

VII

We thus conclude that because Oldham's interlocutory appeal of the district court's denial of immunity turns on issues of fact, we lack jurisdiction over his appeal; neither do we have jurisdiction over a summary judgment denying Oldham immunity in his official capacity because such a judgment is not final and appealable. Because Walker has filed no notice of appeal, we lack jurisdiction over the issue he seeks to raise. Thus, for the reasons stated herein, this appeal is

D I S M I S S E D.