

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7145

FLORENCE HOUSER,

Plaintiff-Appellant,

VERSUS

JAN DUKER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi

March 17, 1993

Before WISDOM and DUHÉ, Circuit Judges, and HAIK, District Judge.¹

PER CURIAM:²

Plaintiff, Florence Houser, appeals the district court's entry of summary judgment in favor of the defendants in this case. Our review of the record and briefs in this case convinces us that the district court committed no reversible error in granting summary judgment for the individual defendants.

The district court concluded the grant of qualified immunity

¹ District Judge of the Western District of Louisiana, sitting by designation.

² 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

given mental health care providers under Miss. Code Ann. § 41-21-105(1) (1975), insulated both James Stubbs, Director of Mississippi's State Mental Hospital, and Dr. Ray Fannin, the treating physician, from liability arising from their official duties, absent any showing of bad faith. The record is devoid of any indication that these individuals acted in bad faith, and we affirm the district court's decision in this respect.

The trial court likewise concluded that this statutory grant of immunity does not entirely supplant what vestiges of common law qualified immunity may remain after the Mississippi Supreme Court's decision in Pruett v. City of Rosedale, 421 So.2d 1046 (Miss. 1982) (abolishing common law doctrine of sovereign immunity). The court held that the members of the Mississippi State Board of Mental Health were entitled to common law qualified immunity for the discharge of their official duties. While we agree with this conclusion of the district court, we note that Miss. Code Ann. § 41-21-105(2) also appears to cloak the Board members with statutory qualified immunity for acts committed within the scope of their employment, absent a showing of wilful or malicious acts, or gross negligence. Nevertheless, the district court's decision on this point is affirmed.

The district court's entry of judgment in favor of all defendants in this appeal is AFFIRMED. All requests for sanctions are DENIED.