

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-3591
Summary Calendar

JAMES CARTER,

Plaintiff-Appellant,

VERSUS

C. H. McNEELY, JOHN P. WHITLEY,
Warden, LA State Penitentiary, and
UNKNOWN DUCOTE,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA 92-171-B-M2)

(May 16, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

James Carter, a state prisoner, filed a civil rights action against a hospital administrator at the Louisiana State Penitentiary, the Warden, and a prison physician, B.C. Ducote. Carter claimed denial of adequate medical treatment. The district court granted summary judgment for defendants. We affirm.

Because the summary judgment evidence established that no fact

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

issue existed that Carter received treatment for his condition and that the Defendants did not act with deliberate indifference to Carter's serious medical needs, the magistrate judge recommended that the Defendants' motion for summary judgment be granted. In his unverified objections to the magistrate judge's Report and Recommendation, Carter contended that his medical records had been falsified and that he never received the medication prescribed by Dr. Ducote. Carter did not file an affidavit or other evidence in support of these allegations. The district court conducted an independent review of the record, denied Carter's motion for summary judgment, granted the Defendants' motion for summary judgment and entered judgment dismissing the action with prejudice. Our review of the record reveals no issue of material fact.

We review a grant of summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 113 S. Ct. 82 (1992). Summary judgment is proper if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits filed in support of the motion, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322, (1986). If the moving party meets the initial burden of showing that there is no genuine issue, the burden shifts to the non-moving party to produce evidence or set forth specific facts showing the existence of a genuine issue for trial. Id. at 322-24; Fed. R. Civ. P. 56(e). The mere allegation

of a factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.² Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).

Carter's verified complaint is considered as summary judgment evidence to the extent that it comports with the requirements of Fed. R. Civ. P. 56(e). Barker v. Norman, 651 F.2d 1107, 1114-15 (5th Cir. 1981).

"Under section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability." Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). There can be liability if a supervisor is either personally involved in the constitutional deprivation or there is a causal connection between the supervisor's conduct and the violation. Id. at 304. Carter has not presented evidence creating an issue of fact that the Administrator and Warden were personally involved in a constitutional deprivation or that their actions were causally connected with a constitutional violation committed by a subordinate. Therefore, the district court properly entered summary judgment for those defendants.

Prison officials violate the constitutional proscription against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, constituting an unnecessary and wanton infliction of pain. Wilson v. Seiter, 501 U.S. 294 (1991). The facts underlying a claim of

² Carter raises a number of factual issues for the first time in his brief on appeal. They are not discussed because they were not presented to the district court in accordance with Rule 56(e).

deliberate indifference must clearly evince the medical need in question and the alleged official dereliction. The legal conclusion of deliberate indifference must rest on facts clearly evincing wanton actions on the part of the defendants. Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985). A mere disagreement with one's medical treatment is not sufficient to show deliberate indifference. Varnado v. Collins, 920 F.2d 320, 321 (5th Cir. 1991). Further, mere negligence will not suffice to support a claim of deliberate indifference. See Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989).

The summary judgment evidence shows that there is no issue of fact that Dr. Ducote examined and treated Carter's condition. Carter's verified complaint and affidavit do not state that the medications were not prescribed by Dr. Ducote or that Dr. Ducote was personally responsible for the failure of other prison officials to dispense the medications. Nor has Carter presented any evidence creating a genuine issue on the question whether his medical records were altered.

Carter has also failed to show that Dr. Ducote (who had examined Carter in the emergency room) was personally responsible for the rescheduled physician's clinic appointments. Dr. Ducote determined that Carter's condition did not present a medical emergency. Assuming without deciding that this conclusion was erroneous and resulted in a delay in treatment, the delay resulted from Dr. Ducote's negligent diagnosis and does not give rise to a constitutional violation. Jackson, 864 F.2d at 1246.

AFFIRMED.