

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5524
Conference Calendar

LARRY DARNELL HENSON-EL,

Plaintiff-Appellant,

versus

THOMAS CARROLL FORD,
Doctor, TDC Coffield Unit,

Defendant-Appellee.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 93-CV-456
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Larry Darnell Henson-El challenges the district court's dismissal of his complaint under 28 U.S.C. § 1915(d). A complaint filed in forma pauperis may be dismissed by the district court if it determines that the action is frivolous or malicious. 28 U.S.C. § 1915(d). A complaint is "frivolous" if it "lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 109

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

S. Ct. 1827, 104 L. Ed. 2d 338 (1989)). District judges have discretion to dismiss as frivolous complaints that are "based on an indisputably meritless legal theory." See Denton, 112 S.Ct. at 1733. Section 1915(d) dismissals are reviewed for abuse of discretion. Id. at 1734.

To prevail on the merits, Henson-El must show that Dr. Ford acted with deliberate indifference to his serious medical needs. Wilson v. Seiter, ___ U.S. ___, 111 S. Ct. 2321, 2327, 115 L. Ed. 2d 271 (1991); Estelle v. Gamble, 429 U.S. 97, 104-06, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). "[T]he facts underlying a claim of 'deliberate indifference' must clearly evince the medical need in question and the alleged official dereliction." Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (citation omitted). A complaint that medical personnel have been negligent in diagnosing or treating a medical condition is not sufficient to show deliberate indifference. Estelle, 429 U.S. at 106; Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Nor is a prisoner's mere disagreement with his medical treatment sufficient to establish a claim under § 1983. Varnado, 920 F.2d at 321.

Henson-El argues pro se that Dr. Ford's refusal to retain him on a low-cholesterol diet amounted to deliberate indifference to a serious medical need. Henson-El complained that, upon his transfer to the Coffield Unit, Dr. Ford did not renew his low-cholesterol-diet card, which had been issued in a previous unit because of high cholesterol levels. Henson-El concedes, as he did in the district court, that Dr. Ford conducted laboratory

tests and eventually issued a diet card for three months. Henson-El complains that Dr. Ford never renewed the diet card once it expired and that he counseled Henson-El only to "avoid greasy foods as much as possible." Henson-El conceded that he had received dietary counseling and that he knew which foods to avoid. He conceded that Dr. Ford continued to monitor his progress by ordering laboratory tests. Although his triglyceride levels varied, Henson-El showed some improvement in his cholesterol levels resulting from his dietary counseling, the three-month low-cholesterol diet, and his admitted efforts to select the proper foods and trade food with fellow inmates.

The facts alleged by Henson-El are not "fanciful," "fantastic," or "delusional." See Denton, 112 S.Ct. at 1733. Henson-El's complaint, however, amounts to a mere disagreement with Dr. Ford's course of treatment and thus lacks "an arguable basis in law." See id. To the extent that Henson-El alleges that Dr. Ford was negligent, this allegation, if true, is not sufficient to establish a constitutional violation under § 1983. The district court's dismissal under § 1915(d) was not an abuse of discretion. See Denton, 112 S. Ct. at 1733. Because Henson-El raises the same argument on appeal, his appeal is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.