

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40953  
Summary Calendar

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MELTON PARIS,

Plaintiff-Appellant,

versus

GARY THOMAS, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Eastern District of Texas  
(6:94-CV-126)

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(March 28, 1995)

Before POLITZ, Chief Judge, KING and STEWART, Circuit Judges.

PER CURIAM:\*

Melton Paris appeals the dismissal with prejudice of his 42 U.S.C. § 1983 claims against his jailers and prison doctor following a **Spears**<sup>1</sup> hearing. Finding no error we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

<sup>1</sup>**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

### Background

Paris was confined to the Anderson County, Texas jail in August 1992 on a sentence imposed for his conviction for possession of a controlled substance. Paris immediately informed jail officials that he suffered from congenital glaucoma, a condition leaving him with a prosthetic right eye, severe tunnel vision, and low intraocular pressure in his left eye. This eye problem required two types of medication, Econopred and Tobrex. He inquired about the availability of this medication and received assurances from the chief jailer that he would have no difficulty securing it.

After Paris consumed his supply of Econopred he asked jail officials to refill his prescription. Officials took approximately five days to refill the prescription which called for use of drops twice daily. Thereafter the medication was provided erratically.

In October of 1992 jail officials escorted Paris to Dr. Daniel M. Gold, an ophthalmologist, for an eye examination. Dr. Gold discontinued the Econopred, finding that Paris' eye had improved to the point that this post-surgery medication was no longer necessary, particularly in light of its dangerous side effects.<sup>2</sup> This action followed the recommendation of Paris' referring ophthalmologist. Gold also issued a new prescription for eyeglasses. Paris asked Gold to have the prescription filled through the State Commission for the Blind. Gold told Paris that

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<sup>2</sup>Dr. Gold testified at the **Spears** hearing that the continued use of Econopred can contribute to the worsening of glaucoma conditions and the development of cataracts.

he was unfamiliar with that procedure and gave the script to either Paris or one of the accompanying jail officials.

After Paris returned to the jail he began to suffer headaches and discomfort in his left eye. His sister contacted his original physician who approved the resumption of the Econopred treatment.<sup>3</sup> Although Paris was told that he would visit Dr. Gold again, Paris had no further contact with Dr. Gold or any other doctor while confined in the Anderson County jail. He did not receive the new glasses while incarcerated there although they apparently were ordered. Paris attempted to complain to the sheriff, Gary Thomas, but his repeated requests for a meeting were ignored.<sup>4</sup>

Paris filed this action under 42 U.S.C. § 1983 alleging that Sheriff Gary Thomas, his successor Mickey Hubert, and Dr. Gold acted with deliberate indifference to his eye condition in violation of the eighth amendment's prohibitions against cruel and unusual punishment. He claimed that as sheriffs of Anderson County, Thomas and Hubert supervised officials who interfered with the treatment of his eye condition. Paris also claimed that Gold acted with deliberate indifference to his condition by discontinuing his prescription for Econopred. The magistrate judge

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<sup>3</sup>Although Dr. Gold testified that Paris' sister contacted him for approval of the resumption of the Econopred treatment, we accept his contention that his sister sought approval from his original physician.

<sup>4</sup>In December of 1992, Paris was transferred to a Texas Department of Criminal Justice, Institutional Division facility. Six weeks later Paris was given his new glasses.

dismissed the claims after conducting an expanded **Spears**<sup>5</sup> hearing and concluding that Paris had no basis for his eighth amendment claims. Paris appealed and moved for appointment of counsel.

#### Analysis

In his brief Paris simply restates the facts presented below and contends that these facts support a finding of a violation of the eighth amendment. Construing his filing liberally, we interpret his appeal to challenge the legal bases for the dismissal of his claims against each defendant.

To prevail on his claim of a violation of the eighth amendment due to denial of medical care, Paris "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."<sup>6</sup> An accused official is not liable unless he knows of an excessive risk to an inmate's health or safety and disregards that risk; the official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must actually draw that inference.<sup>7</sup>

Paris seeks to hold Dr. Gold liable for discontinuing his prescription for Econopred, claiming that this action led to the worsening of his condition.<sup>8</sup> The record demonstrates that Dr. Gold

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<sup>5</sup>Judgment was entered pursuant to 28 U.S.C. § 636(c)(1).

<sup>6</sup>**Estelle v. Gamble**, 429 U.S. 97, 106 (1976).

<sup>7</sup>**Farmer v. Brennan**, 114 S.Ct. 1970 (1994).

<sup>8</sup>The record indicates that the intraocular pressure in Paris' left eye dropped significantly during his stay at the Anderson County jail. Dr. Gold's testimony at the **Spears** hearing made clear, however, that Econopred is an anti-inflammatory drug used to reduce discomfort in the eye following surgery, not a medication to

acted in accordance with the recommendations of the original treating physician and on the basis of his own professional judgment based on the known side effects of the drug. Paris simply disagrees with the treatment he received. A disagreement with the treatment received or even a complaint of negligence or malpractice is insufficient to give rise to a section 1983 claim.<sup>9</sup> To the extent that Paris complains of Gold's failure to ensure that he obtained new eyeglasses, the argument is without merit. The undisputed evidence is that the doctor wrote Paris a new prescription and gave it to either Paris or an accompanying guard. These facts do not support a finding of deliberate indifference.

Paris also seeks to impose liability on Thomas, sheriff at the time of the alleged violations, and Hubert, Thomas's successor and sheriff when the suit was filed. Paris admits that he sued these defendants only because they held the position of Sheriff of Anderson County and because he was unsure who was otherwise responsible for jail administration. In section 1983 actions, a supervisor is liable for the violations of his subordinates if the supervisor is personally involved in the violation, if there exists a causal connection between the supervisor's wrongful conduct and the constitutional violation, or if the supervisor implements a policy so deficient that the policy itself constitutes "a

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control eye pressure. He also noted that because Paris' eye surgery was performed almost four months prior to his entering the jail, an occasional missed dose of the medication would have had no effect on Paris's condition.

<sup>9</sup>**Varnado v. Lynaugh**, 920 F.2d 320 (5th Cir. 1991).

repudiation of constitutional rights" and is the "moving force of the constitutional violation."<sup>10</sup>

We first note that Paris concedes that Hubert did not take office until after the events in question had transpired. Absent some relationship to the challenged events, we see absolutely no basis for liability for Hubert in his individual capacity.<sup>11</sup> Moreover, Paris does not allege that either Thomas or Hubert were directly involved with his medical treatment. Nor does he allege that an unconstitutional policy had been implemented by either party. Paris also fails to allege any conduct by these officials other than that they held the office of sheriff. Under these facts, Paris simply cannot establish individual liability on the part of Thomas or Hubert.<sup>12</sup>

Paris also seeks appointment of counsel on appeal, arguing that his severely limited sight is an "exceptional circumstance"

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<sup>10</sup>**Thompkins v. Belt**, 828 F.2d 298, 303-04 (5th Cir. 1987) (citations omitted).

<sup>11</sup>See **Oliver v. Collins**, 904 F.2d 278 (5th Cir. 1990).

<sup>12</sup>We note, however, that the magistrate judge's opinion dismissed Paris' action in its entirety, including his complaints against Thomas and Hubert in their official capacity as Sheriff of Anderson County. Hubert is the only defendant currently holding the office of sheriff and is, therefore, the only defendant subject to suit in his official capacity. See **Karcher v. May**, 108 S.Ct. 388, 393 (1987) ("[T]he real party in interest in an official-capacity suit is the entity represented and not the individual officeholder."). Because Hubert failed to move for dismissal of the claims against him in his official capacity, the entry of summary judgment on this claim was done *sua sponte*. We note that the ten days notice required by Fed.R.Civ.P. 56(c) was not given to Paris. **Powell v. United States**, 849 F.2d 1576 (5th Cir. 1988) (holding *sua sponte* entry of summary judgment without ten days notice to be reversible error). Paris fails to raise this issue on appeal and it is therefore deemed waived.

warranting the appointment of counsel in this section 1983 action.<sup>13</sup> While Paris' disability may have limited to some degree his ability to pursue this appeal, the underlying factual allegations of his claims are neither complex nor subject to serious dispute; therefore, this case cannot be considered to present "exceptional circumstances" justifying appointment of counsel.<sup>14</sup> The motion for appointment of counsel is DENIED.

AFFIRMED.

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<sup>13</sup>**Cupit v. Jones**, 835 F.2d 82 (5th Cir. 1987).

<sup>14</sup>See **Jackson v. Dallas Police Dep't**, 811 F.2d 260 (5th Cir. 1986) (outlining factors to be considered when ruling on requests for counsel).