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United States Court of Appeals
for the Fifth Circuit

No. 22-10447
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 30, 2024

Lyle W. Cayce
Clerk

THOMAS SAWYER,

Plaintiff—Appellant,

versus

CARYN DIE; TAMMY MESSIMER; DANIEL A. LAKIN;
RUBEN SAPIN; MARCIA ODAL; PEPPER BRADBERRY,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:15-CV-92

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Thomas Sawyer, Texas prisoner #579557, appeals the dismissal of his 42 U.S.C. § 1983 suit after the district court had granted summary judgment. Sawyer alleged that the defendants were deliberately indifferent to his serious medical needs and used excessive force because they continued to back-cuff him despite being aware that he had an injury that caused his shoulder to

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

" APPENDIX A "

dislocate when he was restrained in that manner. On appeal, Sawyer maintains that the court erred in denying him leave to proceed IFP on appeal and in granting summary judgment.

Sawyer also avers that the district court violated his due process and equal protection rights and his right to access to the courts because it included a racial designator, BL, in the caption of his case; erred in dismissing any new claims that were unrelated to his allegation that he was in imminent danger because guards used excessive force in back-cuffing him; abused its discretion in severing his claims; abused its discretion in not concluding that 28 U.S.C. § 1915's three-strikes provision is unconstitutional; abused its discretion by rejecting his second amended complaint; improperly denied him access to the courts; violated his Fifth and Fourteenth Amendment due process rights by dismissing some parties to the suit; and abused its discretion by refusing to grant various motions for a temporary restraining order or an injunction.

Sawyer's notice of appeal does not mention these rulings or evince an intent to appeal them. *See In re Hinsley*, 201 F.3d 638, 641 (5th Cir. 2000). Moreover, requiring the defendants to address these issues would be unduly prejudicial. *Id.* Accordingly, we lack jurisdiction to consider them, given that they are outside the scope of Sawyer's appeal. *Id.*

To the extent that Sawyer is challenging the denials of his IFP motions, he presented the same or substantially similar arguments in his IFP motion before this court. Because this court has already denied Sawyer's IFP motion and because he has paid the filing fee, we need not readdress these issues. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

We review a summary judgment *de novo*. *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012). Regarding his deliberate-indifference claims, Sawyer did not allege facts that establish that defendants Marcia

Odal, M.D., and Pepper Bradberry, a nurse, "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Domino v. Tex. Dep't of Crim. Justice*, 239 F.3d 752, 756 (5th Cir. 2001) (internal quotation marks and citation omitted). Sawyer's mere disagreement with the course of his medical treatment and his insistence that he should have received further treatment in the form of the issuance of a handcuff-modification pass are not sufficient to support a claim of deliberate indifference. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006); *Domino*, 239 F.3d at 756.

Regarding his excessive-force claim, Sawyer did not allege facts that establish that defendants Tammy Messimer, Caryn Die, Ruben Sapin, and Daniel Lakin, correctional officers, applied malicious and sadistic force with the intent to cause harm rather than in a good-faith effort to maintain discipline. *See Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). Moreover, Sawyer does not allege facts that demonstrate that the district court erred in concluding that the defendants were entitled to qualified immunity because he had not demonstrated that they violated a clearly established constitutional right. *See Morgan v. Swanson*, 659 F.3d 359, 371 (5th Cir. 2011) (en banc)

The judgment is AFFIRMED. Sawyer's motions for a temporary injunction pending appeal and appointment of counsel are DENIED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

**THOMAS SAWYER,
TDCJ No. 579557,**

Plaintiff,

v.

CARYN DIE, et al.,

Defendants.

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Civil Action No. 7:15-cv-092-O

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and decisions duly rendered,

It is **ORDERED, ADJUDGED, and DECREED** that Plaintiff's civil right complaint is **DISMISSED** with prejudice.

To the extent that Plaintiff presents claims of negligence, such claims are **DISMISSED** without prejudice.

SIGNED this **30th** day of **March, 2022**.


Reed O'Connor

UNITED STATES DISTRICT JUDGE

" APPENDIX B "

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-10238

United States Court of Appeals
Fifth Circuit

FILED

May 25, 2017

Lyle W. Cayce
Clerk

THOMAS SAWYER,

Plaintiff-Appellant

v.

CARYN DIE; TAMMY MESSIMER; LAWRENCE DOTY; DANIEL A. LAKIN;
JOSEPH C. BOYLES; ET AL,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:15-CV-92

Before CLEMENT, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Thomas Sawyer, Texas prisoner # 579557, moves for leave to proceed in forma pauperis (IFP) on appeal from the dismissal without prejudice of his civil rights lawsuit. Sawyer has three strikes under 28 U.S.C. § 1915(g) and therefore may not proceed IFP in a civil action or in an appeal of a judgment in a civil action unless he is "under imminent danger of serious physical

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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injury.” § 1915(g). Also, the district court certified that Sawyer’s appeal was not taken in good faith for the reasons set forth in the order of dismissal.

The district court’s order of dismissal noted that Sawyer is subject to § 1915(g) and to a court-ordered sanction from the Southern District of Texas that requires him to obtain permission from a judicial officer before filing complaints, pleadings, or other documents. The district court denied Sawyer permission to proceed and dismissed the case without prejudice pursuant to § 1915(g) and the court-ordered sanction after finding that Sawyer failed to allege sufficient facts to state a claim that he was in imminent danger of serious physical injury and likewise failed to state a claim for violation of his civil rights.

By moving to proceed IFP in this court, Sawyer is challenging the district court’s certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). The determination whether a prisoner is under “imminent danger” must be made at the time the prisoner seeks to file his suit in district court or to proceed with his appeal, or when he files a motion to proceed IFP. *Baños v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

Sawyer’s IFP application shows that he qualifies financially to proceed IFP. *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). In addition, his allegations regarding the dislocation of his shoulder warrant a determination that he was under imminent danger of serious physical injury, as required to proceed under § 1915(g). Further, Sawyer’s factual allegations regarding the dislocation of his shoulder state at least a plausible claim of excessive force amounting to unconstitutionally cruel and unusual punishment. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *McCreary v. Massey*, 366 F. App’x 516, 519 (5th Cir. 2010). We do not reach any of his other claims.

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Accordingly, Sawyer's motion for leave to proceed IFP on appeal is GRANTED. *See* § 1915(g); *see also Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Sawyer's motion for a ruling on his IFP motion is DENIED as moot.

Where, as here, the merits of an appeal "are so intertwined with the [IFP] certification decision as to constitute the same issue," we may determine both. *Baugh*, 117 F.3d at 202. Therefore, we dispense with further briefing, VACATE the district court's order, and REMAND the case to the district court for further proceedings consistent with this opinion. *See Clark v. Williams*, 693 F.2d 381, 382 (5th Cir. 1982). The case remains subject to the provisions of § 1915(e)(2), and we take no position on the ultimate merits of any of Sawyer's claims or any defenses that might be raised.