

UNITED STATES COURT OF APPEALS

Filed 1/24/97

FOR THE TENTH CIRCUIT

RICK DEAN PETRICK,

Plaintiff-Appellant,

v.

LARRY FIELDS, Director of
Oklahoma D.O.C.; MILTON VOGT,
M.D., Medical Supervisor of O.S.P.;
JEAN BOND, Medical Administrator
of (GMH); AGNES CRUSER DES,
Superintendent of (GMH); RON
STUTES, Hospital Administrator of
Oklahoma Memorial Hospital;
RONALD E. DORIS, Chief Operating
Officer of Oklahoma Memorial
Hospital; DENNIS COTNER, Medical
Services Administrator of OK D.O.C.,

Defendants-Appellees.

No. 95-7128
(D.C. No. CV-94-611-S)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before ANDERSON, KELLY, and LUCERO, Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff appeals from the district court's dismissal, under 28 U.S.C. § 1915(d)¹, of his civil rights claims alleging that defendants² were deliberately indifferent to plaintiff's serious medical needs, in violation of the Eighth and Fourteenth Amendments, by failing to provide him adequate medical treatment for two facial cysts. On appeal, plaintiff argues that the district court erred in denying his motions for default judgment and that the district court erred in dismissing his civil rights claims as frivolous. Reviewing only for an abuse of discretion, see Green v. Seymour, 59 F.3d 1073, 1077 (10th Cir. 1995)(§ 1915(d) dismissal); Gulley v. Orr, 905 F.2d 1383, 1386 (10th Cir. 1990)(denial of default judgment), we affirm.

¹ Because plaintiff filed his notice of appeal on August 4, 1995, the Prison Litigation Reform Act, signed into law on April 26, 1996, does not apply to this appeal. White v. Gregory, 87 F.3d 429, 430 (10th Cir.), cert. denied, 117 S. Ct. 528 (1996).

² Plaintiff does not appeal the dismissal of Defendants Crusier and Doris for lack of timely service of process.

The district court did not abuse its discretion in denying plaintiff's default judgment motions. Plaintiff does not allege that defendants failed to file timely responses to his complaint, but only that those responses did not adequately address the issues presented by his claims.

Further, dismissal of plaintiff's civil rights claims as frivolous under § 1915(d) was appropriate because, even liberally construing plaintiff's allegations, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), his claims lack any arguable basis in either law or fact. See, e.g., Green, 59 F.3d at 1077 (citing Neitzke v. Williams, 490 U.S. 319, 325 (1989)). We, therefore, affirm the district court's § 1915(d) dismissal for substantially the reasons stated in its order of July 26, 1995.

The judgment of the United States District Court for the Eastern District of Oklahoma is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Stephen H. Anderson
Circuit Judge