

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JESSE DEWAYNE JOHNSON

PLAINTIFF

VS.

CIVIL ACTION NO. 4:13cv69-FKB

DR. FERRELL FORT

DEFENDANT

MEMORANDUM OPINION AND ORDER

This is an action filed by a state inmate pursuant to 42 U.S.C. § 1983. The Court has held a *Spears* hearing, and the parties have consented to jurisdiction by the undersigned. Presently before the Court is Defendant's motion to dismiss. Having considered the motion and Plaintiff's response, as well as the complaint and Plaintiff's testimony at the hearing, the Court concludes that the motion should be granted.

Plaintiff alleges that Defendant, an oral surgeon, committed medical malpractice in connection with surgery performed on Plaintiff in April of 2011. Specifically, Plaintiff contends that Defendant left a loose screw and bone fragments at the surgical site, causing an infection and the necessity of a second surgery. Where the wrong complained of is a denial of medical treatment, a prisoner must allege deliberate indifference to serious medical needs. *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991); *see also Estelle v. Gamble*, 429 U.S. 97, 105 (1976). To establish deliberate indifference, a prisoner must show that the defendant "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. Texas Dep't of Criminal Justice*, 239 F.3d 725, 756 (5th Cir. 2001). An allegation of medical malpractice is insufficient to state a claim for a constitutional violation.

Because Plaintiff's claims have no arguable basis in law or fact, they will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). See *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). A separate order of dismissal will be entered.

SO ORDERED AND ADJUDGED, this the 17th day of October, 2013.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE