

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 16, 2002 Session

DARRELL W. PHILLIPS

v.

**DR. FAISAL SHAMSHAD, RALPH GROMLEY, MARI RICHARDS, BILL
HARBER, JIM BLANKENSHIP, JEFFREY JOHNSON, JOHN KELLY,
VICKIE KIRBY, STEVE VAUGHN, ANTHONY FREEMAN,
TY LEFFNER, ROBERT CONLEY, AND JIM ROSE**

An Appeal from the Circuit Court for Lauderdale County
No. 5096 Joseph H. Walker, Judge

No. W2001-02508-COA-R3-CV - Filed August 16, 2002

This is a 42 U.S.C. § 1983 prisoner case. The plaintiff, a former state prisoner, suffered from knee problems while in prison. He visited the prison clinic at least ten times over a two-month period, receiving treatment for his knee. The defendant medical professionals gave the plaintiff crutches, prescribed medication, issued work waivers, and otherwise treated him. The plaintiff prisoner was dissatisfied and filed several grievances regarding his treatment. All of his grievances were denied, and one was torn up by a prison official. The plaintiff filed this lawsuit alleging, inter alia, that the defendants violated his rights under the Eighth Amendment by being deliberately indifferent to his serious medical needs in the treatment of his knee. The trial court granted summary judgment in favor of the defendants. The plaintiff now appeals. We affirm, finding that the defendants were not deliberately indifferent to the plaintiff prisoner's medical needs.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Darrell Phillips, appellant, pro se.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Dawn Jordan, Assistant Attorney General, for the appellees, Dr. Faisal Shamshad, Ralph Gromley, Mari Richards, Bill Harber, Jim Blankenship, Jeffrey Johnson, John Kelly, Vickie Kirby, Steve Vaughn, Anthony Freeman, Ty Leffner, Robert Conley, and Jim Rose.

OPINION

Plaintiff/Appellant Darrell Phillips (“Phillips”) is a former inmate at the West Tennessee High Security Facility (“Correctional Facility”) in Henning, Tennessee.¹ On April 20, 1998, Phillips filed this civil rights action against thirteen prison officials: Faisal Shamshad, M.D., Ralph Gromley, Mari Richards, Bill Harber, Jim Blankenship, Jeffrey Johnson, John Kelly, Vickie Kirby, Steve Vaughn, Anthony Freeman, Ty Leffner, Robert Conley, and Jim Rose (collectively, “defendants”).

On February 6, 1998, Phillips fell and injured his knee. He was taken to the prison clinic and treated by defendant Gromley, a nurse employed by the Correctional Facility. Gromley issued Phillips some ace bandages and a pair of crutches.

On February 9, 1998, Phillips awoke with pain in his knee. He requested medical attention, which was denied because he had failed to sign the sick roster the night before. Four days later, Phillips filed a grievance. This grievance was denied by defendant Freeman, the chairman of the grievance board and a corrections officer. On February 18, 1998, Phillips was again treated by Gromley, who issued Phillips a work waiver and an extra pillow. Two days later, on February 20, 1998, Phillips filed a grievance regarding his medical care. This grievance was denied. A few days later, prison officials conducted a shakedown of the prison cells, and certain officers confiscated from Phillips’ cell a cane and the extra pillow, because there was no documentation approving his possession of those items. Phillips claimed that, on that same day, his knee collapsed and he fell again.

On March 2, 1998, Phillips filed another grievance regarding his medical treatment. This was once again denied. Phillips claimed that, on that same day, he attempted to file an emergency grievance, but that defendant Vaughn “tore up” his grievance. Phillips claimed that after he protested the mishandling of his grievance, he was verbally abused by prison personnel. Phillips attempted to file another emergency grievance, which was summarily rejected. On March 5, 1998, Phillips filed another grievance on the handling of his prior grievances. That grievance was also denied.

On March 10, 1998, Phillips signed up for sick call. He was seen by Gromley and defendant Richards, another nurse employed at the Correctional Facility. On March 11, 1998, Phillips wrote defendant Conley, the warden at the facility, and defendant Blankenship, the medical administrator at the facility, regarding his medical care and the handling of his grievances. Six days later, Phillips was again seen by defendant Richards, who issued him another work waiver.

On March 18, 1998, Phillips was seen once again by Gromley, who referred him to Faisal Shamshad, M.D., a physician at the Correctional Facility. Dr. Shamshad prescribed Feldine to

¹These facts are taken from our review of the record and from our previous opinion in this case, *Phillips v. Shamshad*, No. 02A01-9811-CV-00318, 1999 Tenn. App. LEXIS 278 (Tenn. Ct. App. Apr. 28, 1999).

Phillips for his pain. The following day, Phillips requested from Dr. Shamshad a “job drop.”² Dr. Shamshad denied this request, telling Phillips that he, Dr. Shamshad, had the same problem with his knee and obviously was able to work. On March 20, 1998, Phillips attempted to pick up a prescription of Feldine but was unable to get it because Dr. Shamshad had not signed off on the prescription and was unavailable at the time. Upon returning to work that day, Phillips was reprimanded by defendant Leffner, a job coordinator at the Correctional Facility, for not being at work and for complaining about his knee. On March 31, 1998, Phillips was given another work waiver by the medical clinic. Phillips claimed that when he gave the work waiver to Leffner, Leffner said that he would make sure that was the last waiver Phillips received.

On April 2, 1998, Phillips returned to the medical clinic. He spoke to Richards, who told him to come back the next day because she could not examine him at that time. The next day Phillips returned to the clinic, where he was seen by defendant Harber, a physician’s assistant at the Correctional Facility. Harber prescribed Tylenol to Phillips but refused to issue him a work waiver. On April 8, 1998, Phillips returned to the clinic to request another prescription of Feldine. Phillips was told by Gromley that he would not be able to receive any more Feldine. Instead Gromley prescribed Tylenol to Phillips. The following day, during sick call, Gromley offered to place Phillips in the infirmary. Phillips refused because the infirmary did not have cable television. On April 10, 1998, Phillips fell again and injured his left elbow. Phillips was given a sling and pain medication.

On April 22, 1998, Phillips was transported to the special needs facility for his orthopedic consult. Ultimately, Phillips had surgery performed on his knee. He has since resumed his normal activities, including basketball.

On April 20, 1998, Phillips filed this lawsuit pursuant to 42 U.S.C. § 1983 for violation of his rights under the First, Fifth, Eighth, Thirteenth, and Fourteenth Amendments of the United States Constitution, and violations under the Tennessee Constitution as well. Phillips alleged that the defendants exhibited deliberate indifference to his serious medical condition and needs, and that the defendants’ intentional, malicious acts and practices caused him to suffer pain, emotional distress, and mental anguish. He also alleged that the defendants violated his constitutional rights by essentially ignoring the grievances he filed about the medical care he was receiving.

On August 21, 1998, the defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted, which the trial court granted. This decision was reversed on appeal. *Phillips v. Shamshad*, No. 02A01-9811-CV-00318, 1999 Tenn. App. LEXIS 278 (Tenn. Ct. App. Apr. 28, 1999). On appeal, this Court held that Phillips’ complaint set forth sufficient allegations of a serious condition warranting medical attention and deliberate indifference to those medical needs, and that it therefore stated a claim for violation of Phillips’ Eighth Amendment rights. The case was remanded to the trial court for further proceedings.

²To receive a “job drop” is to be dismissed from that job indefinitely. *See McMath v. Alexander*, 486 F.Supp. 156, 158 (M.D. Tenn. 1980).

Upon remand, Phillips filed with the trial court a request for admission of facts. The defendants filed an answer to the complaint, as well as a response to Phillips' request for admission of facts. The defendants later served discovery on Phillips. Subsequently, without responding to the defendants' discovery requests, Phillips filed a motion for summary judgment, requesting that the trial court find that the defendants violated his constitutional rights and award damages.

The defendants then filed a motion to compel Phillips to respond to their discovery requests. The defendants also filed a motion to stay their response to Phillips' motion for summary judgment until after receipt of Phillips' response to their discovery requests. The trial court granted the defendants' motion and gave Phillips fifteen days to respond to discovery. Phillips filed his discovery responses. Subsequently, Phillips filed a motion for the trial court to grant a judgment in his favor because the defendants had not responded to his motion for summary judgment. Shortly thereafter, Phillips filed another motion for summary judgment.

Defendants Johnson, Kirby, Vaughn, Freeman, Conley, Rose, and Blankenship then filed a motion for judgment on the pleadings for failure to state a claim upon which relief can be granted, asserting that a prisoner such as Phillips has no constitutional right to an "effective" prison grievance procedure. Shortly thereafter, all of the defendants joined in a motion for summary judgment, supported by a memorandum of law, affidavits, and a statement of undisputed facts. On August 10, 2001, the trial court granted the defendants' motion for summary judgment, finding that there were no genuine issues of material fact, and that the defendants were entitled to judgment as a matter of law. Phillips now appeals that order.

Phillips argues that the trial court erred in granting summary judgment to the defendants because genuine issues of material fact existed with respect to his constitutional claims. He concedes that the trial court properly granted summary judgment in favor of the four defendant medical professionals, defendants Richards, Harger, Gromley, and Dr. Shamshad. However, Phillips argues that the other defendants acted with deliberate indifference to his needs by denying, and in one instance discarding, his grievances in violation of the policies of the Tennessee Department of Correction. He also claims that the other defendants acted with deliberate indifference by confiscating his cane, and that this caused him to suffer unnecessarily due to his medical condition.

We review the trial court's grant of summary judgment de novo with no presumption of correctness. *Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The evidence must be viewed in a light most favorable to the nonmoving party, giving that party the benefit of all reasonable inferences. *Warren*, 954 S.W.2d at 723 (quoting *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997)).

As noted above, Phillips agrees that the trial court properly granted summary judgment in favor of the medical professionals, defendants Richards, Harger, Gromley, and Dr. Shamshad. In

doing so, Phillips implicitly acknowledges that these defendants did not act with deliberate indifference to his serious medical needs, and did not violate his constitutional rights. In light of this, we examine whether a genuine issue of material fact exists with respect to Phillips' claims that the remaining defendants violated his constitutional rights.³

Phillips first argues that the defendants were deliberately indifferent to his serious medical needs in arbitrarily denying his grievances and when defendant Vaughn "tore up" his emergency grievance, contrary to the Correctional Facility's policies. Phillips maintains that this conduct caused him to suffer needlessly and showed that the defendants were deliberately indifferent to his medical needs. Phillips asserts that liability may be imposed on those who supervised the officers who actually committed the violations.

In response, the defendants argue that, while inmates have a right to file grievances, the fact that a prison official refuses to respond to a grievance or responds in an ineffective manner does not amount to a constitutional violation. *See Overholt v. Unibase Data Entry, Inc.*, No. 98-3302, 2000 U.S. App. LEXIS 14087, at *9-*10 (6th Cir. June 14, 2000); *Mays v. Wilkinson*, No. 98-3341, 1999 U.S. App. LEXIS 8380, at *4 (6th Cir. Apr. 28, 1999) (citing *Flick v. Allen*, 932 F.2d 728, 729 (8th Cir. 1991)). Moreover, the defendants argue, under 42 U.S.C. § 1983, the doctrine of *respondeat superior* is not a basis for imposing liability on supervisory officials. *See Rizzo v. Goode*, 423 U.S. 362, 375-78 (1976). "At a minimum, a § 1983 plaintiff must show that a supervisory official at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending subordinate." *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984).

Based on the most favorable view of the facts alleged by Phillips, his claim that the defendants unjustifiably "tore up," ignored, or otherwise denied his grievances is inadequate to state a claim for a constitutional violation, "because there is no inherent constitutional right to an effective prison grievance procedure." *Overholt*, 2000 Tenn. App. LEXIS 14087, at *9; *see also Carpenter v. Wilkinson*, No. 99-3562, 2000 U.S. App. LEXIS 1915, at *5 (6th Cir. Feb. 7, 2000) (dismissing plaintiff's claim that defendants did not timely process his grievance because there is no constitutional right to an effective grievance procedure). Because improper handling of Phillips' grievances does not amount to a constitutional violation, under 42 U.S.C. § 1983, there is no supervisory liability arising out of that same conduct.⁴

³Though Phillips initially raised claims under the First, Fifth, Thirteenth, and Fourteenth Amendments, Phillips only addresses the alleged Eighth Amendment claims of deliberate indifference to serious medical needs in this appeal.

⁴Phillips' admission that the defendant medical professionals did not violate his constitutional rights also undermines the merits of Phillips' grievances, which were based on allegations of inadequate medical care.

Phillips also claims that the defendants were deliberately indifferent to his serious medical needs by confiscating the cane and the extra pillow from his cell.⁵ However, the un rebutted affidavit of defendant Gromley indicates that the cane was confiscated from Phillips because, at that time, he also had crutches and “he did not need both [the cane and crutches].” The record also reflects that the items were confiscated because there was no documentation approving his possession of them. In any event, Phillips later complained that the crutches he was given were irritating his ribs, so Phillips was given another cane. Under these circumstances, we agree with the trial court that depriving the defendant of his cane for a short period of time does not rise to the level of deliberate indifference.

Although Phillips maintains that the defendants were deliberately indifferent to his medical needs, the record indicates otherwise. In a two-month period, Phillips was seen and treated for his knee injury at least ten times. He was given crutches, pain medication, work waivers, and other special treatment. Phillips was referred to a Special Needs Facility and eventually underwent surgery for his knee problems. By late 1998, Phillips had regained the use and strength of his knee such that he was able to play basketball. Other than the confiscation of the cane, Phillips has identified no other episode indicating that his medical complaints were unheeded. Thus, there is no evidence in the record of conduct by these defendants that rises to the level of deliberate indifference. *See Valentine v. Roff*, No. 99-5287, 2000 U.S. App. LEXIS 4964, at *3-*4 (6th Cir. March 20, 2000) (dismissing § 1983 complaint for deliberate indifference when it is undisputed that plaintiff received medical care but disputes only the adequacy of the care received).

Phillips also argues that the trial court erred in failing to issue a determination on his motion for summary judgment and his motion for appointment of counsel. However, by granting the defendants’ motion for summary judgment, the trial court impliedly rejected Phillips’ motion for summary judgment. Furthermore, inmates are not entitled to the appointment of counsel in civil actions, and such an appointment is justified only under exceptional circumstances. *See Jones v. Seay*, No. 99-5429, 2000 U.S. App. LEXIS 4151, at *5 (6th Cir. March 13, 2000). The trial court committed no error in failing to appoint counsel for Phillips in this case. Therefore, we find these arguments on appeal to be without merit. All other issues raised by Phillips are pretermitted by our decision herein.

Accordingly, we affirm the trial court’s grant of summary judgment in favor of the defendants. Costs are to be assessed to the appellant, Darrell Phillips, and his surety, for which execution may issue, if necessary.

HOLLY KIRBY LILLARD, JUDGE

⁵Showing a deliberate indifference to serious medical needs establishes the “unnecessary and wanton infliction of pain” proscribed by the Eight Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976).