

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AUG 28 1997 **KD**

Michael N. Milby, Clerk of Court

ROBERT ARTHUR HALL,
Plaintiff,

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VS.

CIVIL ACTION NO. H-97-874

SHERIFF TOMMY B. THOMAS, et al
Defendants.

MOTION FOR SUMMARY JUDGMENT
OF MAJOR MICHAEL QUINN
IN HIS INDIVIDUAL CAPACITY

Defendant Major Michael W. Quinn ("Major Quinn"), in his individual capacity, now files his Motion for Summary Judgment pursuant to Rule 56, Federal Rules of Civil Procedure, and would respectfully show this Court as follows:

BACKGROUND

1. This is an action brought pursuant to 42 U.S. C. section 1983 by Plaintiff Robert Arthur Hall ("Plaintiff"), a former federal prisoner in the Harris County Jail. Plaintiff, alleges that Major Quinn violated his constitutional rights by improperly classifying him, by not rendering adequate medical care, and by requiring him to wear leg irons. Plaintiff also apparently asserts a claim pursuant to the Americans With Disabilities Act, 42 U.S.C. 12111, et. seq ("the ADA"). Plaintiff has sued Major Quinn in both his official and individual capacities.

2. Major Quinn is entitled to judgment on Plaintiff's Section 1983 against him in his individual capacity because Plaintiff has failed to meet the heightened pleading standard required as a result of Major Quinn's assertion of the qualified immunity defense, and because Plaintiff has failed to



allege that Major Quinn was personally involved in the constitutional deprivation. Major Quinn is also entitled to judgment on Plaintiff's ADA claim because an individual may not be held liable under the ADA and because his qualified immunity shield defeats Plaintiff's cause of action. There is no genuine issue of material fact, and Major Quinn is entitled to judgment as a matter of law.

THE SUMMARY JUDGMENT STANDARD

3. A movant seeking a summary judgment in federal court must initially inform the court of the basis for his motion and point out those portions of the pleadings, depositions, answers to interrogatories, and admissions on file which demonstrate the absence of a genuine issue of material fact and show that he is entitled to judgment as a matter of law. See FED. R. CIV. PRO. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant need not negate the opposing party's claims nor produce evidence showing an absence of a genuine factual issue, but may rely on the absence of evidence to support essential elements of the opposing party's claims. See *International Association of Machinists & Aerospace Workers, Lodge No. 2504 v. Intercontinental Mfg. Co.*, 812 F.2d 219, 222 (5th Cir. 1987).

4. The burden then shifts to the non-movant to set forth specific facts and competent summary judgment evidence to raise a genuine issue of material fact on each essential element of any claim on which he bears the burden of proof at trial. FED. R. CIV. P. 56(c). The substantive law governing the suit identifies the essential elements of the claims at issue and therefore indicates which facts are material. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-moving party may not rest on mere allegations or denials in his pleadings but must produce affirmative evidence and specific facts. *Anderson*, 477 U.S. at 256-56. He meets this burden only if he shows that

a “reasonable jury could return a verdict for the non-moving party”. A mere scintilla of evidence will not preclude granting of a motion for summary judgment. *Id.* at 252.

ARGUMENT AND AUTHORITIES

A. Plaintiff’s Section 1983 Claim

5. Plaintiff contends that Major Quinn, in his individual capacity, violated his constitutional rights by improperly classifying him, by not rendering adequate medical care, and by requiring him to wear leg irons. The distinction between a suit against a government official in his individual capacity and one in his official capacity is not merely a pleading device. Rather, the distinction impacts the requirements for pleading and proving a cause of action. *See Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 3581, 116 L.Ed.2d 301 (1991); *Kentucky v. Graham*, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985).

6. When a plaintiff sues a public official under Section 1983, the district court must insist on heightened pleading from the Plaintiff. *See Morin v. Caire*, 77 F.3d 117, 121 (5th Cir. 1996), citing *Schultea v. Wood*, (“Schultea II”) 47 F.3d 1427 (5th Cir. 1995) (en banc). The Fifth Circuit held in *Morin* that the Court “... must first demand that a plaintiff file a short and plain statement of his complaint, a complaint that rests on more than conclusions alone.” *Morin* at 121.

7. Further, because individual capacity suits seek to impose personal liability on public officials for actions taken under color of law, they can only be established by a showing that the official, acting under color of law, caused the deprivation of a federal right. *Graham, supra*. Thus, Major Quinn can only be found liable in his individual capacity if he were personally involved in the acts causing a deprivation of Plaintiff’s constitutional rights, or if a causal connection exists between his acts and a constitutional violation. *See Baker v. Putnal*, 75 F.3d 190, 199 (5th Cir. 1996);

Thompkins v. Belt, 828 F.2d 298 (5th Cir. 1987). Plaintiff's Complaint does not make either of these showings, and should be dismissed for those reasons.

8. First, Plaintiff has completely failed to comply with the Fifth Circuit's requirement that he present a specific, factual pleading which gives fair notice of the basis upon which Plaintiff seeks to hold Major Quinn liable. While Plaintiff's extremely voluminous and repetitive complaint mentions Major Quinn, the allegations are of a highly conclusory nature, which is clearly inadequate under *Morin* and *Schultea II*. Plaintiff mentions Major Quinn in the factual allegations section of the Complaint in five places. He contends that Major Quinn: (1) engaged in a pattern and practice of not following up on written medical orders and instructions by incompetent medical personnel (page 17); (2) egregiously failed to follow the steps and safeguards for the treatment of seizure disorders (page 23); (3) provided inadequate medical treatment of sores (page 27); (4) did not answer a letter written by Plaintiff (page 30); and (5) received a fax from the United States Marshal's Office and a copy of a letter from Plaintiff's attorney (page 32). Plaintiff does not allege that Major Quinn, whom he describes in the Complaint as the Hospital Administrator, treated any of Plaintiff's maladies, that he himself directed certain treatment, withheld treatment or failed to follow up on medical instructions. He does not allege the manner in which Major Quinn was allegedly involved in providing inadequate medical treatment of sores or seizure disorders. Additionally, he does not allege that a causal connection exists between Major Quinn's conduct and the constitutional violation.

9. The Complaint is devoid of any allegation whatsoever that Major Quinn was personally involved with determining Plaintiff's classification status. Similarly, Plaintiff makes no specific allegations as to the manner in which Major Quinn was involved in the requirement that he wear leg irons, although he pleads in a conclusory manner that Major Quinn was deliberately

indifferent to his condition. This is simply unacceptable under the heightened pleading standard set out by the Fifth Circuit in *Schultea II*, and Major Quinn is entitled to judgment as a matter of law.

10. In addition to the above, Major Quinn's qualified immunity shield protects him from any liability. Government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982); *Jacquez v. Procunier*, 801 F. 2d 789, 791 (5th Cir. 1986); *Elliot v. Perez*, 751 F. 2d 1472, 1477 n. 13 (5th Cir. 1985).

11. A two step analysis is employed when applying the qualified immunity defense. *Siegert v. Gilley*, 500 U.S. 226, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1991); *Salas v. Carpenter*, 980 F. 2d 299, 305 (5th Cir. 1992). The court first determines whether the plaintiff has alleged the violation of a clearly established constitutional or statutory right. *Siegert*, 111 S. Ct. at 1793; *Salas* at 305; *King* at 656. If so, the court analyzes whether the defendant's conduct was objectively unreasonable, because "even if an official's conduct violates a constitutional right, he is entitled to qualified immunity if the conduct was objectively reasonable." *Salas*, at 305-6. Whether the conduct of which a plaintiff complains violated clearly established law presents an essentially legal question. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). Officials and officers are immune from suit unless the law clearly proscribes the action they took. *Mitchell*, 105 S. Ct. at 2816.

12 Although Plaintiff's claim is inadequate under the heightened pleading requirement set out by the Fifth Circuit, Plaintiff has alleged the violation of clearly established constitutional rights. The analysis then proceeds to a determination of the objective reasonableness of the conduct.

13. As set forth above, Plaintiff alleges broadly that Major Quinn provided inadequate medical treatment for his seizure disorder and sores, that he failed to follow up on written medical orders and instructions, and that he received copies of certain correspondence. Plaintiff cannot show, however, that Major Quinn's conduct was objectively unreasonable because he cannot show that Major Quinn engaged in any specific conduct. Plaintiff's broad allegations about Major Quinn's deliberate indifference are unsupported. His conduct can thus not be shown to be objectively unreasonable.

14. Similarly, Plaintiff claims broadly that Major Quinn was deliberately indifferent to his proper classification status and to the requirement that he wear leg irons. However, he raises absolutely no facts which would establish that deliberate indifference on either claim. Because there is no conduct to analyze from an objective reasonableness standard, Major Quinn is entitled to judgment as a matter of law by virtue of his qualified immunity shield.

B. Plaintiff's ADA Claim

15. Plaintiff also argues that his rights and this case arise under the ADA. Title II of the ADA generally prohibits discrimination against the disabled by public entities. However, whether the provisions of the ADA apply to a county jail is not clear. See *Torcasio v. Murray*, 57 F.3d 1340 (4th Cir. 1995) (Any rights which inmates may have under the ADA were not clearly established at the time of suit since Congress has not specifically stated that the ADA applies to prisons and since courts are in disagreement over the ADA's application to prisons); *Garrett v. Anselone*, 940 F. Supp. 933 (W.D. Va 1996) (Defendants' conduct did not violate any clearly established right under the ADA and Defendants are entitled to qualified immunity.) While there is other case law which might support the application of the ADA to the Harris County Jail, there is no authority in the Fifth Circuit which

directly addresses this issue. Major Quinn asserts that the provisions of Title II of the ADA do not apply to the Harris County Jail.

16. Even assuming that the ADA applies to the Harris County Jail, however, there are two reasons Plaintiff's ADA claim against Major Quinn should be dismissed. First, the law under Title I of the ADA does not permit an action against an individual employee. The law under Title II of the ADA should be consistent with this principle. Alternatively, Major Quinn's qualified immunity shield bars any recovery by Plaintiff against him in his individual capacity. Each of these points will be considered in turn.

17. The courts have held under Title I of the ADA that the ADA provides only for employer liability, and not for individual liability. See *Mason v. Stallings*, 82 F. 3d 1007 (11th Cir. 1996) (county commissioners could not be held liable in their individual capacities for ADA violations); *Fernandez v. Community Asphalt, Inc.*, 934 F. Supp. 418 (S.D. Fla. 1996) (suit against individuals is not allowed under Title VII, the ADEA, or the ADA). This principle of liability should be applied consistently to an action under the ADA's Title II. The ADA claim against Major Quinn in his individual capacity should thus be dismissed.

18. In analyzing the application of Major Quinn's qualified immunity shield to the assertion of a statutory right, the Court undertakes the two step analysis set out *Siegert*, inquiring first whether there has been an allegation of a clearly established constitutional or statutory right. In this case, there is no violation by Major Quinn of a clearly established statutory right. Plaintiff apparently asserts his status as a disabled person under the ADA is based on his alleged chronic kidney condition, epilepsy, depression, and hyperthyroidism¹. Any rights Plaintiff may have under the ADA with regard

¹ Plaintiff repeatedly contends throughout the Complaint that he had the condition of hyperthyroidism. Plaintiff's medical records clearly indicate that his condition was hypothyroidism.

to the application of the ADA to a county jail facility were not clearly established at the time of the incidents made the basis of Plaintiff's lawsuit, and are not established at this time. See *Torcasio; Garrett, supra*. Where there is no violation of a clearly established statutory right, qualified immunity applies, and operates to be Plaintiff's ADA claim.


CONCLUSION

19. There is no genuine issue of material fact on Plaintiff's claims against Major Quinn in his individual capacity, and Major Quinn is entitled to judgment as a matter of law.

WHEREFORE, PREMISES CONSIDERED, Defendant Major Michael W. Quinn respectfully prays that this Court grant him summary judgment on Plaintiff's claim against him in his individual capacity, and for such other and further relief which to this Court shall seem just and proper.

Respectfully submitted,

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County Attorney


By 

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ATTORNEY FOR DEFENDANT
MAJOR MICHAEL W. QUINN

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 1997, a true and correct copy of the foregoing Motion of Major Michael Quinn was served by certified mail, return receipt requested upon Thomas J. Bevans, 16000 Memorial Drive, Suite 230, Houston, Texas 77079 and upon Ralph C. Longmire, Assistant Attorney General, P. O. Box 12548, Austin, Texas 78711-2548.



MARY E. BAKER
Assistant County Attorney

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CIVIL ACTION NO. H-97-874

ORDER

BE IT REMEMBERED that on the ____ day of _____, 1997 came on to be considered the Motion for Summary Judgment of Major Michael W. Quinn in his individual capacity. The Court, having considered the Motion , the Response, and the arguments of counsel, is of the opinion that the said Motion should be, in all respects, GRANTED. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by Major Michael W. Quinn be, and hereby is, granted.

UNITED STATES DISTRICT JUDGE