

**UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED**

AUG 29 1997

Michael N. Milby, Clerk of Court

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

ROBERT ARTHUR HALL,
Plaintiff,

VS.

SHERIFF TOMMY B. THOMAS, et al
Defendants.

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CIVIL ACTION NO. H-97-874

MOTION FOR SUMMARY JUDGMENT
OF SHERIFF TOMMY B. THOMAS
IN HIS INDIVIDUAL CAPACITY

Defendant Sheriff Tommy B. Thomas (“Sheriff Thomas”), 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 inmate of the Harris County Jail. Essentially, Plaintiff alleges that Sheriff Thomas violated his constitutional rights by improperly classifying him, by requiring the use of leg irons, and by denying him adequate medical care. Plaintiff also asserts a claim pursuant to the Americans With Disabilities Act (“ADA”), 42 U.S.C. 12111 et. seq. Plaintiff has sued Sheriff Thomas in both his official and individual capacities.

2. Sheriff Thomas is entitled to judgment on Plaintiff’s claims against him in his individual capacity. First, Plaintiff has not plead his case against Sheriff Thomas with the standard of specificity required in a case, as this one, in which the Sheriff Thomas has raised his

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qualified immunity defense. Second, Plaintiff is not entitled to proceed against Sheriff Thomas on the basis of respondeat superior, and Plaintiff has not alleged the personal involvement which would be required to hold Sheriff Thomas personally liable under Section 1983. Additionally the ADA is not applicable to individuals. Finally, Sheriff Thomas' qualified immunity shield protects him from both Plaintiff's Section 1983 and his ADA claim. There is no genuine issue of material fact, and Plaintiff 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. The distinction between the suit against a government official in his or her individual or official capacities 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. Because individual capacity suits seek to impose personal liability on public officials for actions taken under color of law, personal liability in Section 1983 actions can only be established by a showing that the official, acting under color of law, caused the deprivation of a federal right. *Graham, supra*. Further, Sheriff Thomas 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).

8. Plaintiff's Complaint does not make either of those showings. 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 he seeks to hold Sheriff Thomas liable. *Morin* at 121. In the factual allegations portion of the Complaint, Plaintiff mentions Sheriff Thomas eight times, alleging that he: (1) engaged in a pattern and practice of the hiring of unqualified personnel to work in classification (page 8); (2) engaged in a pattern and practice, based on negligence, to omit or overlook medical data (page 11)¹; (3) inadequately treated Plaintiff's kidney condition from February 22, 1995 to July 12, 1996 (page 12); (4) received copies of two letters to the United States Marshal's office from Plaintiff's counsel regarding Plaintiff's complaints (page 15); (5) failed to protect Plaintiff from discrimination due to his disability (page 16); (6) engaged in a pattern and practice of not following up on written medical instructions by incompetent medical personnel (page 17); (7) failed to follow the steps and safeguards necessary for the treatment of seizure disorders (page 23); and (8) inadequately treated Plaintiff's sores (page 27).

9. What is most noteworthy about Plaintiff's allegations against Sheriff Thomas is what he does not allege. Plaintiff does not allege that Sheriff Thomas himself overlooked medical data, or recommended, provided, or withheld medical treatment, whether as

¹ Sheriff Thomas is entitled to judgment on this issue, as to establish deliberate indifference, a plaintiff must present facts tending to demonstrate actual knowledge or awareness of the serious medical need on the part of the named defendant. See *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994).

to Plaintiff's kidney condition, seizure disorder, or sores. He also does not allege that Sheriff Thomas was involved in any manner in his alleged improper classification, or in the requirement that Plaintiff wear leg irons. Plaintiff has failed to allege the type of personal involvement necessary to hold Sheriff Thomas individually liable. *Baker* at 199.

10. When Plaintiff's allegations about Sheriff Thomas are examined, it is clear that he is seeking to hold Sheriff Thomas liable on *respondeat superior* grounds. However, a supervisor such as Sheriff Thomas cannot be held vicariously liable for the actions of a subordinate under Section 1983. See *Doe v. Taylor ISD*, 15 F.3d 443,454-55 (5th Cir. 1994) (en banc).

11. In addition, Sheriff Thomas' 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).

12. 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 reasonable, 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.

13. 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. Having met that standard, the Court must determine the objective reasonableness of the conduct. *Salas* at 305-6.

14. Plaintiff cannot demonstrate that Sheriff Thomas' conduct was objectively unreasonable because he cannot demonstrate that Sheriff Thomas engaged in any specific conduct at all. Plaintiff's claims against Sheriff Thomas are broad and conclusory. With regard to his deprivation of medical care claim, Plaintiff cannot show that Sheriff Thomas provided inadequate treatment, or that he personally failed to follow up on written medical orders.

15. Similarly, Plaintiff claims broadly that Sheriff Thomas 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 Plaintiff has alleged no specifics, there is no conduct which can be determined to have been objectively unreasonable. Sheriff Thomas is entitled to judgment on Plaintiff's Section 1983 claims by virtue of his qualified immunity shield.

B. Plaintiff's ADA Claim

16. 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. Sheriff Thomas asserts that the provisions of Title II of the ADA do not apply to the Harris County Jail.

17. Even assuming that the ADA applies to the Harris County Jail, however, there are two reasons Plaintiff's ADA claim against Sheriff Thomas 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, Sheriff Thomas' qualified immunity shield bars any recovery by Plaintiff against him in his individual capacity. Each of these points will be considered in turn.

18. 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 Sheriff Thomas in his individual capacity should thus be dismissed.

19. In analyzing the application of Sheriff Thomas' 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 Sheriff Thomas 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 hyperthyroidism². Any rights Plaintiff may have under the ADA with regard 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 bar Plaintiff's ADA claim.

CONCLUSION


20. There is no genuine issue of material fact, and Sheriff Thomas is entitled to judgment as a matter of law on Plaintiff's claims.

WHEREFORE, PREMISES CONSIDERED, Defendant Sheriff Tommy B. Thomas respectfully prays that this Court grant him summary judgment, and for such other and further relief which to this Court shall seem just and proper.

² Plaintiff repeatedly contends throughout the Complaint that he had the condition of hyperthyroidism. Plaintiff's medical records clearly indicate that his condition was hypothyroidism.

Respectfully submitted,

MICHAEL P. FLEMING
County Attorney


By 

MARY E. BAKER
State Bar No. 08534000
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002
(713) 755-7166
(713) 755-8924 Fax

ATTORNEY FOR DEFENDANT
SHERIFF TOMMY B. THOMAS

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 1997, a true and correct copy of the foregoing Motion for Summary Judgment by Sheriff Tommy B. Thomas was served by certified mail, return receipt requested upon Thomas J. Bevans, 16000 Memorial Drive, Suite 230, Houston, Texas 77079 and on Ralph C. Longmire, Assistant Attorney General, P. O. Box 2548, Austin, Texas 78711-2548.



MARY E. BAKER
Assistant County Attorney