

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 26, 2019

Lyle W. Cayce
Clerk

No. 18-40308
Summary Calendar

AUNDRA B. JACKSON,

Plaintiff-Appellant

v.

WARDEN BRYAN GORDY, Garza East Unit; ASSISTANT WARDEN PHONSO J. RAYFORD, Garza East Unit; LIEUTENANT JEREMY DELOSSANTOS, Torres Unit; DOCTOR PHILEMON D. CHANG, Medical Doctor, Garza East Unit; MANAGER R. MARTISEK, Mental Health Services, Garza East Unit; NURSE PRACTITIONER PAMELA K. WAGNER, Garza East Unit; LICENSED VOCATIONAL NURSE APRIL M. FLORES, Garza East Unit; MEDICAL DIRECTOR CORY F. JONNEY, University of Texas Medical Branch at John Sealy Hospital; WARDEN B. BARNETT, Garza East Unit; NICHOLAS SANTELLANO; CONSUELO GONZALES,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:16-CV-338
USDC No. 2:16-CV-339

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-40308

Aundra B. Jackson, Texas prisoner # 1992365, filed a pro se civil rights complaint under 42 U.S.C. § 1983 against five employees of the Texas Department of Criminal Justice (TDCJ) alleging, among other things, that they failed to protect him against an assault by other inmates. He also filed another § 1983 complaint against two TDCJ employees and ten employees of the University of Texas Medical Branch (UTMB) alleging that they failed to provide him with adequate medical treatment for the injuries he suffered in the assault incident. After these complaints were consolidated, only the failure-to-protect claims against three TDCJ employees and the inadequate-care claims against four UTMB employees were retained. The district court granted summary judgment to the TDCJ employees because Jackson failed to exhaust his available administrative remedies. The district court granted summary judgment to the UTMB employees because Jackson failed to show that they had violated his constitutional rights and because those defendants were entitled to qualified immunity. Accordingly, the district court dismissed the action with prejudice.

We review the district court's summary judgment dismissal de novo. *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010). "We review evidence in the light most favorable to the nonmoving party, but conclusional allegations and unsubstantiated assertions may not be relied on as evidence by the nonmoving party." *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011) (citation omitted). "If the moving party meets the initial burden of showing there is no genuine issue of material fact, the burden shifts to the nonmoving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial." *Gowesky v. Singing River Hosp. Sys.*, 321 F.3d 503, 507 (5th Cir. 2003) (internal quotation and citation omitted).

No. 18-40308

The competent summary judgment evidence shows that Jackson did not exhaust his available administrative remedies regarding the assault incident. Although Jackson argues on appeal that he otherwise satisfied the grievance process, the exhaustion requirement is mandatory, and Jackson has not shown that there were no available remedies. *See Ross v. Blake*, 136 S. Ct. 1850, 1856-58 (2016). Therefore, the district court did not err in concluding that his claims were not exhausted and that the TDCJ employees were entitled to summary judgment on that basis. *See Dillon*, 596 F.3d at 265; FED. R. CIV. P. 56(a).

After the voluntary dismissal of certain UTMB employees as named defendants, the only remaining UTMB employees at issue before us are Pamela K. Wagner and April M. Flores. Because the UTMB employees invoked qualified immunity, Jackson had the burden to demonstrate (1) that the UTMB employees' conduct violated a constitutional right and (2) that the constitutional right at issue was "clearly established so that a reasonable official in the defendant's situation would have understood that his conduct violated that right." *Brewer v. Wilkinson*, 3 F.3d 816, 820 (5th Cir. 1993); *see also Hanks v. Rogers*, 853 F.3d 738, 744 (5th Cir. 2017).

The medical records do not show that Wagner or Flores exhibited deliberate indifference to Jackson's serious medical needs. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Although Jackson asserts that certain entries in those medical records were falsified, the competent summary judgment evidence still fails to establish deliberate indifference even if Jackson's assertion were true. Because Jackson failed to establish a constitutional violation, Flores and Wager were entitled to qualified immunity as to these claims. *See Brewer*, 3 F.3d at 825.

Accordingly, the district court's judgment is AFFIRMED. Jackson's motion for leave to supplement the record is DENIED.