[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11685
Non-Argument Calendar

D.C. Docket No. 5:14-cv-00013-MHH-JHE

STACY ALLEN SPARKS,

Plaintiff-Appellee,

versus

RODNEY INGLE, et al.,

Defendants,

CHRIS WHITLEY,
Administrator,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

(January 11, 2018)

Before MARCUS, MARTIN and JILL PRYOR, Circuit Judges.

PER CURIAM:

Chris Whitley, the Fayette County Jail Administrator, appeals the district court's denial of his motion for summary judgment in favor of a pro se state prisoner, Stacy Sparks, finding that Whitley was not entitled to qualified immunity in Sparks's 42 U.S.C § 1983 action. Sparks alleged that Whitley was deliberately indifferent to his seizure disorder, which was a serious medical need, when he denied Sparks seizure medication, despite knowing that Sparks had seizures. Whitley argues that he was entitled to qualified immunity because he acted within his discretionary authority, he did not violate Sparks's constitutional rights, and Sparks cannot show that clearly established law provided Whitley with fair warning that his conduct was unlawful. After careful review, we affirm.

We review "de novo a district court's disposition of a summary judgment motion based on qualified immunity, applying the same legal standards as the district court." Durruthy v. Pastor, 351 F.3d 1080, 1084 (11th Cir. 2003). All issues of material fact are resolved in favor of the plaintiff, and then, under that version of the facts, the legal question of whether the defendant is entitled to qualified immunity is determined. Id. "With the plaintiff's best case in hand, the court is able to move to the question of whether the defendant committed the constitutional violation alleged in the complaint without having to assess any facts in dispute." Robinson v. Arrugueta, 415 F.3d 1252, 1257 (11th Cir. 2005). Thus, material issues of disputed fact do not foreclose summary judgment based on

qualified immunity. Id. Additionally, we liberally construe a pro se plaintiff's pleadings. Caldwell v. Warden, FCI Talladega, 748 F.3d 1090, 1098 (11th Cir. 2014). We may affirm for any reason supported by the record, even if not relied on by the district court. Cochran v. U.S. Health Care Admin., 291 F.3d 775, 778 n.3 (11th Cir. 2002).

Qualified immunity shields government officials from civil liability when: (1) the government official was acting within the scope of his discretionary authority when the allegedly wrongful act or omission occurred; and (2) the official's conduct does not "violate clearly established statutory or constitutional rights." Goebert v. Lee Cty., 510 F.3d 1312, 1329 (11th Cir. 2007). "The standard for determining whether a right is well-established for purposes of qualified immunity is whether the right violated is one about which a reasonable person would have known." Id. (quotations omitted). We recognize three sources of law that put an official "on notice" of statutory or constitutional rights: (1) "specific statutory or constitutional provisions;" (2) "principles of law enunciated in relevant decisions;" and (3) "factually similar cases already decided by state and federal courts in the relevant jurisdiction." Id. at 1330.

Federal and state governments "have a constitutional obligation to provide minimally adequate medical care to those whom they are punishing by incarceration." Harris v. Thigpen, 941 F.2d 1495, 1504 (11th Cir. 1991).

"[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain," which is proscribed by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976) (quotation and citation omitted). To show deliberate indifference to a serious medical need, a prisoner must demonstrate: (1) an objectively serious medical need; and (2) a defendant who acted with deliberate indifference to that need. Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003). A serious medical need is one that has been "diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Id. Deliberate indifference requires that the defendant: (1) have "subjective knowledge of a risk of serious harm"; (2) disregard that risk; and (3) display conduct beyond mere negligence. Id. at 1245-46.

The United States Supreme Court has held that a prison guard's intentional denial or delay of medical care is evidence of deliberate indifference. Estelle, 429 U.S. at 104-05. And we have held that "failure to provide prompt attention" to serious medical needs "by delaying necessary medical treatment for nonmedical reasons" shows deliberate indifference. Thomas v. Town of Davie, 847 F.2d 771, 772-73 (11th Cir. 1988). Further, "[w]hen prison guards ignore without explanation a prisoner's serious medical condition that is known or obvious to

them, the trier of fact may infer deliberate indifference." Brown v. Hughes, 894 F.2d 1533, 1538 (11th Cir. 1990).

To be appealable, an order must either be final or fall within a specific class of interlocutory orders that are made appealable by statute or jurisprudential exception. 28 U.S.C. §§ 1291, 1292; Alt. Fed. Sav. & Loan Ass'n of Ft. Lauderdale v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 375-76 (11th Cir. 1989). The issue of qualified immunity is immediately appealable under the collateral order doctrine. Behrens v. Pelletier, 516 U.S. 299, 306-08 (1996). Thus, "[a] district court's order denying a defendant's motion for summary judgment on qualified immunity grounds is immediately appealable despite there being disputed issues of fact, unless the only issue on appeal is the sufficiency of the evidence relative to the correctness of the plaintiff's alleged facts." Perez v. Suszczynski, 809 F.3d 1213, 1216-17 (11th Cir. 2016) (quotation and emphasis omitted).

As an initial matter, qualified immunity is immediately appealable under the collateral order doctrine, which means that we have jurisdiction to review the denial of Whitley's claim of qualified immunity. Behrens, 516 U.S. at 306-08. We do not, however, have jurisdiction to decide whether Sparks's claims are barred by 42 U.S.C. §§ 1997e(a), which requires a prisoner to exhaust all administrative remedies, or 1997e(e), which requires a prisoner to demonstrate physical injury, because those decisions are not final and do not fall within any

exception. See Alt. Fed. Sav. & Loan, 890 F.2d at 375-76.[1] Accordingly, we are reviewing only the decision concerning qualified immunity in this appeal.

The district court did not err in denying Whitley's motion for summary judgment on the ground that he was not entitled to qualified immunity. Although Whitley was acting within his discretionary authority, the facts, viewed in the light most favorable to Sparks, see Durruthy, 351 F.3d at 1084, show that Whitley's conduct amounted to deliberate indifference. As the summary judgment record reveals, Sparks suffered from a seizure disorder and was administered no medication for it from March 30 until May 15. Because it is undisputed that Sparks's unmedicated epileptic condition while at the jail posed a serious threat to his health, we agree with the district court that Sparks has satisfied, for purposes of summary judgment, the first prong of his Eighth Amendment claim, which is the presence of a "serious medical need." See Farrow, 320 F.3d at 1243.

As for the second prong of the test -- deliberate indifference -- Sparks produced sufficient evidence to create genuine dispute as to whether Whitley had subjective knowledge of a risk of serious harm to Sparks but intentionally disregarded that risk by delaying the renewal of his anti-seizure prescriptions. There is evidence in the record that Whitley knew that Sparks had seizures without

[1] Indeed, in a prior qualified immunity case, we noted that "our interlocutory jurisdiction extends only to qualified immunity legal issues" and not to whether the PLRA barred the prisoner from seeking nominal and punitive damages. Al-Amin v. Smith, 511 F.3d 1317, 1335 n.35 (11th Cir. 2008).

his medication because Sparks had two seizures in Whitley's presence as a result of the jail not administering his medication, and Whitley twice told another inmate that the sound he heard was Sparks having a seizure. Nevertheless, according to the record, when Sparks asked Whitley "to see the doctor or inquire about his seizure medicine," "[e]very time" Whitley gave Sparks "the run-around," stating that (1) "[a]ll the deputies [were] busy and could not take him to the doctor;" (2) "the sheriff has not approved it yet;" or (3) "the county commission could not afford it." Additionally, Whitley never passed on Sparks's complaints to the sheriff, as required by the jail employee policy. And although Sparks made no complaints when he was finally able to see a doctor on May 15, the doctor renewed his anti-seizure medication and added a new one. Thus, taken in the light most favorable to Sparks, see Durruthy, 351 F.3d at 1084, the facts in the summary judgment record indicate that Whitley violated a constitutional right by disregarding the risk to Sparks and displaying conduct beyond mere negligence. See Farrow, 320 F.3d at 1245-46.

Moreover, clearly established law existed to put Whitley on notice that his actions violated Sparks's constitutional rights. The United States Supreme Court and this Court have both held that intentionally delaying medical treatment to a prisoner with a serious medical need demonstrates deliberate indifference. See Estelle, 429 U.S. at 104-05; Goebert, 510 F.3d at 1329; Brown, 894 F.2d at 1538;

Thomas, 847 F.2d at 772-73. On this record, the district court did not err when it found that Whitley was not entitled to qualified immunity.

AFFIRMED.