

COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

April 29, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

MARVIN LEE SPENCER) KNOX COUNTY
) 03A01-9712-CV-00522
Plaintiff-Appellant)
)
)
v.)
) HON. HAROLD WIMBERLY, JR.,
) JUDGE
TIM HUTCHISON, Sheriff)
and KNOX COUNTY, TENNESSEE)
)
Defendants-Appellees) AFFIRMED AND REMANDED

SAM G. SMITH, JR., OF KNOXVILLE FOR APPELLANT

WENDALL HALL, Deputy Law Director, OF KNOXVILLE FOR APPELLEES

O P I N I O N

Goddard, P.J.

Appellant Marvin Lee Spencer appeals dismissal of his suit against Appellees Tim Hutchison, Sheriff of Knox County, and Knox County, Tennessee. His complaint alleges that while incarcerated in a Knox County penal institution he suffered injuries by reason of the negligence of the Appellees. In his appellate brief he details his complaints as follows:

Appellant filed his Complaint in the Circuit Court for Knox County, Tennessee on July 8, 1996 alleging that he sustained an aggravation of pre-existing injuries as the sole and proximate result of the defendant Sheriff's failure to supply a bed to the appellant while he was held in a day room of the Knox County Jail; and by the defendant Knox County's failure to examine, diagnose, or treat appellant for his injuries.

After a full evidentiary hearing the Trial Judge dismissed the complaint. Our reading of the record, including the testimony of Mr. Spencer and the statement of the evidence of his mother and Captain Dorothy Pinkston of the Knoxville Sheriff's Department,¹ persuades us that the evidence does not preponderate against the findings of fact of the Trial Judge, and his action in dismissing the complaint is affirmed under Rule 10(a) of this Court.

The cause is remanded for collection of costs below. Costs of appeal are adjudged against Mr. Spencer and his surety.

Houston M. Goddard, P.J.

¹ The court reporter had transcribed the testimony of Mr. Spencer and the Court's opinion, but before she could transcribe that of Mr. Spencer's mother and the Police Captain, her car was broken into and the tapes as to them stolen.

CONCUR:

Don T. McMurray, J.

William H. Inman, Sr.J.