

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 12, 2007

No. 06-31153

Charles R. Fulbruge III
Clerk

RUDY YOUNG,

Plaintiff-Appellant,

v.

BANK ONE, N.A.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
No. 2:04-CV-772

Before REAVLEY, SMITH, and GARZA, Circuit Judges.

PER CURIAM:*

We have reviewed the briefs and applicable law and have consulted pertinent portions of the record and have heard oral argument from counsel. The re-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sult on appeal turns on the standard of review, which is whether the district court abused its discretion in striking plaintiff's tardy response to the motion for summary judgment.

In part because of the numerous delays occasioned by plaintiff in the course of this litigation, we conclude that the district court did not abuse its considerable discretion. We make this decision irrespective of what ruling we might make if reviewing the district court's action de novo. It is, however, an unfortunate result, given that it follows from the inadvertent mistake of counsel.

We are without jurisdiction on appeal to rule on the award of costs to the bank. The record contains no ruling on costs, nor does the notice of appeal mention it.

The summary judgment is AFFIRMED.