

July 28, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30161
Summary Calendar

STEPHEN R. LINZAY,

Plaintiff-Appellant,

versus

WILLIAM J. HENDERSON; U.S. POSTAL SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 01-cv-938

Before HIGGINBOTHAM, DENNIS, and PICKERING Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Stephen R. Linzay brought suit against defendant-appellees alleging, inter alia, claims under Title VII of the Civil Rights Act, 42 U.S.C. § 20005 et seq., and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq.. The district court granted defendants' motion for summary judgment dismissing Linzay's Title VII claims on their merits. On January 20, 2004,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the district court conditionally dismissed Linzay's FMLA claims and closed the case, subject to reopening the case if the parties did not consummate a settlement of those FMLA claims. Linzay appeals solely the district court's summary judgment of his Title VII claims.

On April 9, 2004, the district court reopened this case upon information that the parties had not settled their FMLA claims. The case is currently open and being litigated in the district court. Because this case is still being actively litigated in the district court, the district court has not yet issued a "final decision," and we must dismiss this appeal for lack of appellate jurisdiction. See 28 U.S.C. § 1291; *Way v. Reliance Ins. Co.*, 815 F.2d 1033, 1033-34 (5th Cir. 1987).

DISMISSED