

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30329
Conference Calendar

JAMES H. MURUNGI; ASENATH K. MURUNGI,

Plaintiffs-Appellants,

versus

MERCEDES BENZ CREDIT CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 00-CV-3200-N

October 25, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

James H. and Asenath K. Murungi appeal from the district court's entry of judgment for the defendant after granting the defendant's unopposed motion to dismiss.

The Murungis move to supplement the appellate record with documents that were not presented to the district court in this case. IT IS ORDERED that their motion is DENIED.

The Murungis assert that their retained counsel in this civil matter rendered ineffective assistance, and therefore, the district court should not have granted Mercedes Benz Credit

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Corporation's (MBCC's) motion to dismiss based on the lack of opposition to that motion. "[T]he sixth amendment right to effective assistance of counsel does not apply to civil proceedings." Sanchez v. United States Postal Serv., 785 F.2d 1236, 1237 (5th Cir. 1986). Any claim of malpractice which the Murungis might have against their former counsel is "separate and distinct from" the suit against MBCC from which this appeal arises. Id.

The Murungis disagree with the district court's denial of their postjudgment motion. After the district court denied the motion, the Murungis neither amended their notice of appeal nor filed a second notice of appeal in order to appeal the district court's ruling. Consequently, we do not have jurisdiction over the matter. See FED. R. APP. P. 4(a)(4)(B); Reeves v. Collins, 27 F.3d 174, 177 (5th Cir. 1994).

This appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2.

APPEAL DISMISSED AS FRIVOLOUS. MOTION DENIED.