

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20528

Summary Calendar

ROSE MARY LOWERY

Plaintiff-Appellant,

versus

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(H-98-CV-3811)
December 2, 2002

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Rose Mary Lowery, appealing *pro se*, seeks review of the district court's grant of defendant's motion for summary judgment and the district court's cancelling of a hearing on plaintiff's motion to remove her counsel of record and defendant's summary judgment motion. We find that the district court did not abuse its discretion in granting summary judgment without deciding

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

plaintiff's motion to terminate her attorney, and we affirm the district court's grant of summary judgment.

In response to defendant's motion for summary judgment, plaintiff's counsel, Ronald Mock, filed an answer which the district court has correctly characterized as "utterly non-responsive" and noted that "Mock's inadequate filing on behalf of Lowery creates an appearance that either Mock is plainly incompetent or that he could care less about the representation of Lowery in this proceeding." Lowery immediately filed *pro se* a second answer which was also non-responsive.

In addition, Lowery filed a letter, and later a formal motion to remove Mock as her counsel, in which she asked for an extension of time to hire a new attorney. The court scheduled a hearing for April 5 on the motion to remove counsel and defendant's motion for summary judgment. On April 4, Lowery filed *pro se* an addendum to her answer to the motion for summary judgment. While more responsive than her previous answers, this out of time reply also lacked any evidence to refute the motion for summary judgment.

The district court apparently canceled the hearing scheduled for April 4, and instead granted defendant's motion for summary judgment on April 11. As we have stated in the past, the district court has wide discretion to determine its calendar.¹ Therefore it

¹ *HC Gun & Knife Shows, Inc., v. City of Houston*, 201 F.3d 544, 549-550 (5th Cir. 2000).

was not an abuse of discretion to cancel the hearing and rule on the summary judgment motion.

As to the merits of the motion for summary judgment, this court reviews *de novo* the grant of summary judgment.² After reviewing the case, we affirm the district court's grant of summary judgment for the same reasons stated by the district court in its order granting summary judgment. The district court is therefore AFFIRMED.

² *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir.1998).