

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30480
Summary Calendar

PATRICIA H. GAINES; LAWRENCE GAINES,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 01-CV-204-F

December 12, 2002

Before BARKSDALE, DEMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Patricia H. Gaines and Lawrence Gaines, plaintiffs, appeal the summary judgment dismissal of their Federal Tort Claims Act suit. They argue that the district court improperly denied their second request for a continuance pursuant to FED. R. CIV. P. 56(f).

We review the denial of a Rule 56(f) motion for abuse of discretion. Stearns Airport Equip. Co. v. FMC Corp., 170 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

518, 534 (5th Cir. 1999). A party filing a Rule 56(f) motion must demonstrate 1) why they need additional discovery and 2) how that discovery will likely create a genuine issue of material fact. Id. at 534-35. A party who has not diligently pursued discovery is not entitled to relief under Rule 56(f). Beattie v. Madison County Sch. Dist., 254 F.3d 595, 606 (5th Cir. 2001).

The plaintiffs have had ample time to conduct needed discovery. The plaintiffs' discovery deadline set by the district court had passed more than two months before the district court granted their initial Rule 56(f) motion. Their case was pending for fourteen months before they filed a second Rule 56(f) motion, alleging difficulties deposing an expert due to their attorney's busy litigation practice. That their attorney is a busy sole-practitioner does not relieve them of their duty to diligently pursue discovery. Cf. Nat'l Assoc. of Gov't Employees v. City Pub. Serv. Bd. of San Antonio, Tex., 40 F.3d 698, 709 (5th Cir, 1994). The district court did not abuse its discretion in denying the plaintiffs' second request for a continuance. The judgment of the district court is AFFIRMED.