

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-20507
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 15, 2014

Lyle W. Cayce
Clerk

GARETH FALCONER,

Plaintiff–Appellant,

versus

LEHIGH HANSON, INCORPORATED, a Texas Corporation;
CAMPBELL CONCRETE & MATERIALS, L.P., a Texas Corporation,

Defendants–Appellees.

Appeal from the United States District Court
for the Southern District of Texas
No. 4:11-CV-373

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

In this employment-discrimination suit, plaintiff Gareth Falconer

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-20507

appeals only the denial of his motion to reconsider the dismissal of the case. He candidly acknowledges that the standard of review is abuse of discretion.

Before denying reconsideration, the district court had issued a careful and convincing eleven-page Opinion and Order explaining why dismissal was appropriate after Falconer had failed to prosecute the case. The court pointed out, *inter alia*, that “[a]lthough not disclosed at the time, that ‘pro se’ complaint was actually drafted by suspended attorney, Michael L. Barnes.” Also, “Unbeknownst to this Court, . . . Falconer refiled exactly the same complaint . . . , resulting in the opening of another case before [a different judge] Falconer then attempted to pay his filing fee with a check drafted in Barnes’ name, but that check was returned for nonsufficient funds Falconer took no further action in that case.”

On appeal, Falconer mainly argues that his failure to prosecute was that he needed more time to obtain a lawyer. That does not constitute “excusable neglect.” There is no abuse of discretion. Essentially for the reasons amply provided by the district court, the order appealed from, which is the Memorandum and Order dated August 7, 2013, denying the motion to reconsider, is **AFFIRMED**.