

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-1229  
Summary Calendar

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WILLIE PAUL WHITE,

Plaintiff-Appellant,

VERSUS

ANNETTE STRAUSS, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(CA3-88-0536-T)

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(February 12, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:<sup>1</sup>

White appeals the dismissal of his § 1983 action. We affirm.

I.

Texas prisoner Willie Paul White filed a civil rights suit pursuant to 42 U.S.C. § 1983 against the City of Dallas and several city officials, including former police officer William Edward Spruce III. In addition to the city and Spruce, White named as defendants the current mayor of Dallas, a former mayor of Dallas,

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

and the police chief (collectively, the Senior Officials). White named the Senior Officials and Spruce in their individual and official capacities. Spruce shot White shortly after White committed an armed robbery. White is serving a life sentence following a conviction for that offense.

White alleged that on the night of December 22, 1984, he was walking on a Dallas street twirling a 12-inch pipe. "All of a sudden," a police car screeched to a halt in front of him, and Spruce jumped out, waiving a gun. White ran. Spruce pursued him.

According to White, he stopped and dropped his hands to his sides. Spruce then shot him in the back and hand. Spruce then allegedly searched and arrested White illegally. White suffered injuries requiring hospitalization. White alleged that Spruce shot him pursuant to an unidentified city policy or custom designed to deprive individuals of their constitutional rights. The practice is widespread, White alleged without stating any specific facts. Spruce allegedly used excessive force, which the city condones. Spruce also allegedly committed the state offenses of assault and battery and attempted murder of White. White sought \$8 million in damages.

None of the issues White raises on appeal have any merit.<sup>2</sup> A consideration of the issues that warrant discussion follows:

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<sup>2</sup> In particular, there is no merit to White's argument that he was denied the benefit of discovery, or to his argument that the district court held his pleadings to an excessively high standard.

II.

A.

The district court dismissed the city and Senior Officials because White failed to state a claim against them. Municipal and governmental officials acting in their official capacity are only liable if official policy or governmental custom cause the deprivation of constitutional rights. **Monell v. Department of Social Services of the City of New York**, 436 U.S. 659, 690-94, (1978); **Fraire v. City of Arlington**, 957 F.2d 1268, 1277 (5th Cir. 1992). Liability is incurred only when the municipality "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" or where "constitutional deprivations [occurred] pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." **Monell**, 436 U.S. at 690-91.

White alleged no specific policy or custom implemented by the city or the Senior Officials. He alleges no personal involvement of the Senior Officials in his injury. The district court correctly concluded that White stated no federal claim.

The district court also correctly held that White did not state a claim under Texas law. The Texas Tort Claims Act waives governmental immunity for negligent acts but not for intentional acts. **City of Waco v. Hester**, 805 S.W.2d 807, 810 (Tex. Ct. App. 1990). Because White alleged an intentional act, immunity is not waived. Thus, White stated no state law claim.

B.

The district court dismissed the action against officer Spruce because White failed to secure service of the complaint on Spruce within 120 days as required by Federal Rule of Civil Procedure 4(j). White states for the first time on appeal that Spruce was in fact served. But the record contains no return of service or other indication of service and White made no such argument in the district court. We do not consider factual arguments made for the first time on appeal.

C.

White argues that the district court erred in not recusing himself. But the only grounds for recusal are adverse rulings the trial court made against him and omissions to rule. Adverse rulings are not sufficient to support a motion for recusal. **United States v. MMR Corp.**, 954 F.2d 1030, 1045 (5th Cir. 1992).

D.

White argues that the district court erred in refusing to appoint counsel. Barring exceptional circumstances, a § 1983 plaintiff has no right to appointed counsel. **Ulmer v. Chancellor**, 691 F.2d 209, 212 (5th Cir. 1982).

White's case is not exceptional. It is frivolous. The district court did not abuse its discretion in declining to appoint counsel.

E.

Finally, we conclude that we must consider imposition of sanctions in this case for filing a frivolous appeal.

First, we note that this is the sixth appeal taken to this court in this action. The earlier appeals were from orders denying appointment of counsel and denial of leave to file an amended complaint. This is a blatant abuse of the judicial process.

Because this appeal is patently frivolous, we impose a monetary sanction of \$50 against White. Until White pays the Clerk of this court the \$50 monetary sanction imposed, White will not be permitted to file any further pleadings, either in the district courts of this circuit or in this court without obtaining leave of court to do so.<sup>3</sup>

AFFIRMED.

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<sup>3</sup> In the district court, White captioned one of his motions for recusal as a "motion for Rectum." He captioned his other motion for recusal properly. In another suit, White also filed a "Motion for Rectum." We take this means to warn White that filing such abusive documents either in the district court or in this court with contemptuous captions could result in their being stricken or the imposition of sanctions. **Therriault v. Silber**, 579 F.2d 302, 303-04 (5th Cir. 1978), **cert. denied**, 440 U.S. 917 (1979).