

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1716
Conference Calendar

MODESTUS OKERE,

Plaintiff-Appellant,

versus

F. M. SIBLING ET AL.,

Defendants,

F.M. SIBLING and
JULIAN BERNAL, Officers,
City of Dallas,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:89-CV-2508-C
- - - - -
(December 14, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Modestus Okere filed a civil rights action against Dallas Police Officers Lawrence Cadena, F.M. Sibley, and Julian Bernal. Okere alleged that the three officers illegally arrested him on October 9, 1987, breaking his arm in the process. The defendants

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

filed a motion for summary judgment. Okere filed no response and the defendants filed a supplement to their motion for summary judgment. Okere again filed no response. On March 9, 1992, the magistrate judge granted the motion for summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); G.A.T.X. Aircraft Corp. v. M/V COURTNEY LEIGH, 768 F.2d 711, 714 (5th Cir. 1985). To have defeated the defendants' motion for summary judgment, Okere must have set forth specific facts showing a genuine issue as to a material fact. Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S.Ct. 462 (1992).

The defendants served requests for admissions under Fed. R. Civ. P. 36. Okere did not respond to these requests. Rule 36(b) provides that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Okere made no such motion prior to the granting of summary judgment. This conclusive effect applies equally to those admissions made affirmatively and those established by default, even if the matters admitted relate to material facts that defeat a parties claim. American Auto Ass'n v. AAA Legal Clinic, 930 F.2d 1117, 1120 (5th Cir. 1991).

The admissions conclusively show that the officers' conduct in arresting Okere was objectively reasonable. Because their conduct was objectively reasonable, the officers were entitled to qualified immunity against the claims of unlawful arrest, search, and seizure. See Hunter v. Bryant, ___ U.S. ___, 112 S.Ct. 534, 537, 116 L.Ed.2d 589 (1991). Further, a finding of objective reasonableness precludes a successful excessive force claim. See Reese v. Anderson, 926 F.2d 494, 500 (5th Cir. 1991). These admissions were supported by the defendants' other summary judgment evidence. The district court's grant of summary judgment in favor of the defendants was appropriate and properly supported. See Hulsey v. Texas, 929 F.2d 168, 171 (5th Cir. 1991).

The magistrate judge denied Okere's motion to alter or amend judgment under Rule 59(e). Denial of a Rule 59(e) motion is reviewed for abuse of discretion. This standard means that the decision of the magistrate judge will be upheld if it is reasonable. Midland West Corp. v. Fed. Deposit Ins. Corp., 911 F.2d 1141, 1145 (5th Cir. 1990). Okere has produced nothing on appeal to show that the district court's action was not reasonable.

AFFIRMED.