

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1860
Conference Calendar

MARK ANTHONY TUTT,

Plaintiff-Appellant,

versus

JEFF MILLER, Individually and
in his Official Capacity as Deputy
Sheriff of Taylor County, ET AL.,

Defendants,

JEFF MILLER, Individually and
in his Official Capacity as Deputy
Sheriff of Taylor County, and
TAYLOR COUNTY TEXAS,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1-91-CV-006-C
- - - - -
(October 28, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Tutt argues that the findings of the district court are clearly erroneous. He does not assert that there is insufficient evidence to support the district court's findings; he contends that the district court's rejection of his evidence and acceptance of Miller's testimony is clearly in error. Tutt also

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

argues that the district court erred in disregarding the record developed during the Spears** hearing.

Tutt's argument that the district court erred in disregarding the Spears record is frivolous. The purpose of the Spears hearing is to obtain "a more definite statement" of the claim to determine whether the claim is frivolous, not to determine the case on the merits. Id., 766 F.2d at 181-82. His remaining argument is no more than a disagreement with the credibility determinations of the trier of fact. "When findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings. Unless we are left with the definite and firm conviction that a mistake has been committed, we accept the trial court's findings." Dardar v. Lafourche Realty Co, Inc., 985 F.2d 824, 827 (5th Cir. 1993) (internal quotations and citations omitted).

Rule 52(a) requires the district court to "find the facts specially and state separately its conclusions of law. . . ." See Chandler v. City of Dallas, 958 F.2d 85, 88-89 (5th Cir. 1992). We will not set aside findings of fact unless they are clearly erroneous. Id. at 89.

The district court comported with the requirements of Rule 52(a), and Tutt offers no argument to convince the Court that a mistake has been committed. Deferring to the credibility determinations of the district court, we conclude that the

** Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

findings of the district court are not clearly erroneous.

Tutt contends that the district court failed to set forth the legal standards on which it based its conclusions of law. He asserts that it is unclear whether the district court based its decision on the Fourth, Eighth, or Fourteenth Amendment.

The district court concluded that Tutt "had not met his burden of proof as against either of the defendants in this case." Although the district court's conclusions of law are subject to a de novo review, see Chandler v. City of Dallas, 958 F.2d at 89, the argument is irrelevant. The district court found that the factual basis for Tutt's constitutional claim, the body-slam and injury, did not occur. Appellant's brief argues from the premise that these facts were proved and found. Because the district court's findings are not clearly erroneous, the premise of appellant's argument disappears.

Tutt's appeal presents no issue of arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.