UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2700
Summary Calendar

BERTRAND BROWN,

Plaintiff-Appellant,

versus

W. J. ESTELLE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
from the Southern District of Texas
(CA-H-84-3813)

(December 5, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

By EDITH H. JONES, Circuit Judge:[*]

Bertrand Brown filed a civil rights complaint alleging an Eighth Amendment excessive force claim. From the take-nothing judgments entered by the trial court, he has appealed. No reversible error occurred. We affirm.

After holding a Spears[1] hearing, the district court dismissed the claims against W. J. Estelle, Oscar Savage, Raymond

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] Spears v. McCotter, 766 F.2d 129 (5th Cir. 1985).

Procunier, and M. Herklotz because these defendants had no personal involvement in the incident, but he permitted the lawsuit to continue against the other defendants. Brown's motion for appointment of counsel was granted.

Following a jury trial, the district court entered judgment for James Field, Rick Looney, and John Wyeth and dismissed the complaint with prejudice as to these defendants. The district court also granted a default judgment against defendant Mark Dawson because he failed to answer the complaint. Brown filed a timely notice of appeal from this judgment. The district court denied his motion to proceed in forma pauperis (IFP) on appeal.

Brown filed a post-judgment motion in which he sought to obtain, from his court-appointed counsel, the records of an unrelated criminal case, the records of this civil case, and the $500 default judgment. The district court denied the motion and Brown did not file a notice of appeal from this order. This Court granted Brown's motion to proceed IFP on appeal.

Brown argues that the district court improperly dismissed Estelle, Procunier, Herklotz, and Savage following the Spears hearing. An official who is sued in his personal capacity cannot be liable under § 1983 on the theory of respondeat superior; to be liable he must have been personally involved in the plaintiff's injury. Williams v. Luna, 909 F.2d 121, 123 (5th Cir. 1990). At the Spears hearing Brown admitted that Estelle, Herklotz, and Savage were not personally involved in the use of excessive force and made no allegations against Procunier. Because Brown did not

allege that they were personally involved in his injury, the district court properly dismissed these defendants.

Brown also argues that he was denied effective assistance of counsel. The Sixth Amendment right to effective assistance of counsel does not apply in civil litigation. Sanchez v. U.S. Postal Service, 785 F.2d 1236, 1237 (5th Cir. 1986). This claim is without merit.

Brown next challenges the racial composition of the jury. A challenge to the composition of the jury based on race must be made at trial or the claim is waived. Dawson v. Wal-Mart Stores, Inc., 978 F.2d 205, 210 (5th Cir. 1992). The record does not indicate the racial composition of the jury, and Brown made no challenge to the jury at trial based on its racial composition. Therefore, any such challenge to the jury is waived.

Brown also argues that the defendants introduced evidence in violation of the order granting his motion in limine. This argument, however, is not factually supported by the record.

Brown filed a motion in limine in the district court in which he sought to exclude evidence of his disciplinary record; his medical history unrelated to injuries suffered during the use-of-force incident; his unrelated litigation; his prison classification; and the nature of his conviction. The district court overruled the motion. On the second day of the trial, the parties entered into an agreement in which both sides agreed to confine the questioning to the August 26, 1983 incident. The defendants agreed not to question Brown regarding other use-of-

force allegations and lawsuits, and Brown agreed not to question the defendants about other excessive force allegations lodged against them. However, the district court dissolved the agreement because the defendants' attorney questioned Brown about other use-of-force incidents. The district court also overruled its previous order allowing the defendants to introduce evidence regarding Brown's custody classification but the court stated that the evidence "may become admissible." Because the defendants did not violate a court order granting Brown's motion in limine, and Brown does not challenge the denial of the motion in limine, his claim is without merit.

Brown also challenges the jury verdict. The record does not indicate that Brown moved for judgment as a matter of law at the close of the defendants' case. In the absence of the motion, the sufficiency of the evidence to support the jury's verdict is not reviewable. See Coughlin v. Capitol Cement Co., 571 F.2d 290, 297 (5th Cir. 1978).

Additionally, although Brown frames his argument as a challenge to the sufficiency of the evidence, he is actually challenging the jury's credibility determinations. This Court generally will not disturb on appeal the credibility determinations of the trier-of-fact. See Dawson, 978 F.2d at 208; Martin v. Thomas, 973 F.2d 449, 453 (5th Cir. 1992).

For the first time on appeal Brown raises Eighth Amendment excessive force and denial of medical care claims from incidents occurring at the Eastham Unit. This Court need not

address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Finally, Brown argues that the district court improperly denied his post-judgment motion. Brown filed this motion after he filed his notice of appeal and did not file an amended notice of appeal following the denial of the motion. Fed. R. App. P. 3(c) requires that "[t]he notice of appeal shall . . . designate the judgment, order or part thereof appealed from." Pope v. MCI Telecommunications Corp., 937 F.2d 258, 266 (5th Cir. 1991), cert. denied, 112 S. Ct. 1956 (1992). Because Brown did not file a notice of appeal specifically challenging the order denying the post-judgment order, the propriety of that order is not before this Court. Id. at 266-67.

Accordingly, the judgment of the district court is **AFFIRMED**.