

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7359
Summary Calendar

GUY RICHARDS, JR. d/b/a Richards
Bonding Company,

Plaintiff-Appellant,

versus

THE CITY OF COLUMBUS, A Municipal
Corporation, and CHARLIE WATKINS,
Chief of Police,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Mississippi
(CA EC90 123 B D)

(October 12, 1993)

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Guy Richards (Richards), a former professional bail bondsman licensed by the State of Mississippi, brought a state court action against the City of Columbus, Mississippi (City), and its Chief of Police, Charlie Watkins

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(Watkins), alleging deprivations of his property rights without due process, in violation of state and federal law. Defendants removed the action and moved for summary judgment. The district court granted that motion, and Richards appeals. We affirm.

Facts and Proceedings Below

Richards wrote bail bonds in Columbus, Mississippi, and surrounding communities from the time he was first licensed in 1976 until December 13, 1988, when his bail bondsman license was revoked by the Mississippi Department of Insurance. This lawsuit concerns events occurring in early 1986. Richards acknowledges that prior to January 8, 1986, he owed the City money on forfeited appearance bonds extending back several years. As a result of Richards's default on these forfeited bonds, Watkins dictated a memo on January 7, 1986, to the effect that, effective January 8, at 7:00 a.m., Richards would not be able to make bonds at the Columbus Police Department. This memo was posted at the city jail in Columbus without prior notice to Richards.

After learning of the notice, Richards inquired at the Columbus Police Department and was informed by Assistant Chief of Police Petty Glover that Richards was surety on several forfeited outstanding bonds.¹ Richards was told in April 1988 that the total amount of the bonds forfeited at that time was \$13,200. Upon

¹ There is some dispute between the parties as to whether Richards and Glover discussed the amount Richards owed on the forfeited bonds *prior* to the posting of Watkins's notice. We agree with the district court that this factual dispute is not material to the resolution of the due process claim because defendants' actions did not deprive Richards of any constitutionally protectable property right, and therefore summary judgment was not precluded.

advisement that the City would proceed against Richards on these bonds, Richards paid the City \$6,200, leaving several thousand dollars still owed. On December 13, 1988, after a hearing at which Richards was present, the Insurance Department of the State of Mississippi revoked Richards's bail bondsman license.²

Richards filed the present action in the Lowndes County Circuit Court on May 10, 1990. In his state court complaint, he alleged (1) that the City had failed to comply with statutory procedures governing collection of money owed the city on forfeited bonds, and (2) that Watkins's posting of the memo at the jail, without prior notice to Richards, deprived Richards of his state and federal constitutional property rights without due process. Following removal of the lawsuit to the United States District Court for the Northern District of Mississippi, defendants moved for summary judgment. The district court found that the defendants' actions did not implicate any property right of Richards under either state or federal law and granted the defendants' motion. Richards appeals only the dismissal of his due process claim.³

² Mississippi law allows the Insurance Department to revoke a bail bondsman license for forfeiture of a qualification bond or default in payment on forfeited bonds. MISS. CODE ANN. § 83-39-15(b), (f).

³ Even before the district court, Richards focused on the due process claim to the exclusion of his claim that the defendants had not complied with statutory collection procedures on the forfeited bonds. Although the district court addressed the statutory collection claim, it found that Richards had not made a sufficient showing of how the defendants had violated statutory collection procedures.

We do not reach the statutory collection claim, as Richards does not re-urge the claim on appeal and has therefore abandoned

Discussion

We review the grant of summary judgment *de novo*, applying the same standard as the district court. *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 975 (5th Cir. 1991). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

In his due process claim, Richards asserts that he was deprived of his property interests in his bail bond business without due process, in violation of federal and state law, when Watkins posted the memo at the Columbus jail without any advance notice to Richards. U. S. CONST. amend. XIV; MISS. CONST., art. 3, § 14. Our threshold consideration must be to identify a property interest entitled to due process protection. *Brock v. Roadway Express, Inc.*, 107 S.Ct. 1740, 1747 (1987).

We assume *arguendo*, as did the district court, that Richards had a property interest in his state-issued bondsman license and that that property interest merited due process protection. Although there are no Mississippi cases so holding, as a general rule licenses required for the pursuit of a livelihood "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell v. Burson*, 91 S.Ct. 1586, 1589 (1971). See *Canfield Aviation, Inc. v. Nat'l Transp. Safety Bd.*, 854 F.2d 745, 750 (5th Cir. 1988) ("[A]n interest in a certificate or license that is a prerequisite to employment is a cognizable

it. *Cooper v. Sheriff, Lubbock County*, 929 F.2d 1078, 1081 n.1 (5th Cir. 1991).

property interest, protectable by the procedural due process requirement of the Fifth Amendment").

Mississippi statutes set forth procedures for the revocation or suspension of a bondsman's license by the Mississippi Department of Insurance under certain circumstances, provided notice and a hearing are afforded the bondsman. MISS. CODE. ANN. §§ 83-39-15, *et seq.* These statutes do not, however, authorize a municipal chief of police to affect the validity of a license issued by state authorities, and, in fact, it is clear that Watkins's notice did not deprive, or even purport to deprive, Richards of his license to write bonds within the state of Mississippi. It is undisputed that Richards continued to write bail bonds in the municipalities surrounding Columbus after the date the notice was posted in Columbus and prior to the revocation of his license by the Mississippi Department of Insurance. Thus the defendants' actions did not deprive Richards of any property interests in his bondsman license.

Even if Richards's property interest in his license was encompassed by the Fourteenth Amendment's protections, however, he did not have a property interest in his ability to write bail bonds in Columbus, Mississippi. Although Mississippi law prohibits sheriffs or other officials from accepting bonds from an unlicensed bondsman, MISS. CODE ANN. § 83-39-23, there is no provision in the Mississippi statutory scheme which mandates that such officials accept a bond from a bondsman merely because the bondsman is licensed by the state. Indeed, Mississippi law expressly leaves the approval of tendered bonds to the discretion of a police chief

or other designated officer. "The chief of the municipal police or a police officer or officers designated by order of the municipal judge may approve bonds or recognizances." MISS. CODE ANN. § 21-23-8 (emphasis added). See also MISS. CODE ANN. § 99-33-7 (statute governing justice court, provides that it is "lawful . . . to take bond with sufficient sureties"). Because the police chief may approve bonds, it is reasonable to infer from the language of the statute that he may also decline to approve a bond. In his deposition testimony, Richards conceded that he needed the approval of a designated police officer in order to have bail bonds written by him accepted by that office or the local municipal court.

Richards had no constitutionally recognized property interest in his ability to have bonds written by him accepted in the Columbus, Mississippi, police department or municipal court, because approval of such bonds was at the discretion of Watkins, as chief of police. "Use of the word 'may' as opposed to mandatory language as 'shall' has been found to indicate a legislature's intention to bestow discretion on the [person] charged to apply the statute." *Neuwirth v. Louisiana State Bd. of Dentistry*, 845 F.2d 553, 557 (5th Cir. 1988). Discretionary statutes do not give rise to constitutionally protectable interests. *Id.* at 557-558.

Because Richards's ability to have bail bonds written by him accepted at the Columbus city jail is not a property right protectable by the Fourteenth Amendment, he did not suffer any unconstitutional deprivation of property when Watkins posted the memo at the jail, without prior notice to Richards, prohibiting acceptance there of bonds written by Richards. As the district

court observed, defendants' actions, far from amounting to a deprivation of Richards's livelihood sufficient to require constitutional safeguards, constitute at most "the denial of a unilateral expectation to write bonds in a particular locale in which he had failed to meet his obligations as surety." The district court did not err in granting summary judgment for the defendants.

Conclusion

For the reasons stated above, the judgment of the district court is

AFFIRMED.