

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-9090
Summary Calendar

EDWARD ALLEN MOORE,

Plaintiff-Appellant,

VERSUS

SUZANNE HENDERSON, Tarrant
County Clerk, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(4:91-CV-20-K)

(March 25, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Moore instituted this § 1983 suit against the county clerk of Tarrant County, Texas, and one of her deputy clerks, alleging violation of his constitutional right of access to the courts. Moore maintains that the defendants violated his constitutional rights by refusing to allow him to file a third party action in a case pending in Tarrant County, Texas. The district court granted

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the defendants' motion for summary judgment and Moore lodged this appeal.

We find no merit in this appeal. Moore admits that he filed his original answer in the case pending in Tarrant County on December 7, 1989. Moore, however, waited more than a year to file his amended answer in which he sought to bring in a third party defendant. In refusing to file Moore's amended answer, the deputy clerk was simply adhering to Texas Rule of Civil Procedure 38, which requires a party to obtain leave of court to file a third party complaint more than thirty days after service of the original answer. Because Moore never sought leave of court to file his amended answer seeking to bring in additional parties, the clerk violated neither Texas law nor Moore's constitutional rights in refusing to accept the pleading. The district court therefore correctly granted summary judgment.

AFFIRMED.²

² Moore has also filed a motion seeking sanctions against the defendants and a motion to strike appellee's brief. We deny both motions.