

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1186
Conference Calendar

FRED M. ANDERSON,

Plaintiff-Appellant,

versus

BUREAU OF PRISONS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:91-CV-0227-H

- - - - -
August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

This Court reviews a summary judgment *de novo*. Thomas v. Price, 975 F.2d 231, 235 (5th Cir. 1992). Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). If the record as a whole could not lead a rational trier to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). "To avoid a summary judgment, the non-moving party must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case. Unsubstantiated assertions of an actual dispute will not suffice." Thomas, 975 F.2d at 235.

"When affidavits are used to support or oppose a summary judgment motion, they shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated therein." Cormier v. Pennzoil, 969 F.2d 1559, 1561 (5th Cir. 1992) (citations and internal quotations omitted); see also Fed. R. Civ. P. 56(e). In response to the Bureau of Prison's summary judgment, Anderson produced several affidavits from various inmates. Most of the affidavits do not concern whether Reynolds and Carter divulged protected information. The affidavits that do mention that matter are not based on personal knowledge, and instead, rely on hearsay statements. See Cormier, 969 F.2d at 1561. "Neither the district court nor this Court may properly consider hearsay evidence in affidavits or depositions." Id. Consequently, looking at the summary judgment evidence that was not objectionable, the district court properly concluded that no genuine issue of material fact was present. See id. Summary judgment for the defendant is AFFIRMED.