

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1299  
Conference Calendar

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BILLY WAYNE HORTON,

Plaintiff-Appellant,

versus

BILL HEDGEPEETH, ET AL.,

Defendants,

BILL HEDGEPEETH, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:91-CV-0132-R  
- - - - -

October 27, 1993

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

PER CURIAM:\*

Billy Wayne Horton argues that the district court's order denying his motion for relief under Fed. R. Civ. P. 60(b) is an appealable order under the collateral order doctrine.

"[C]ourts of appeal have jurisdiction of appeals from all final decisions of the district courts of the United States." Thompson v. Betts, 754 F.2d 1243, 1245 (5th Cir. 1985) (citing 28 U.S.C. § 1291) (internal quotations omitted). Generally, "an

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

order is final only when it ends the litigation on the merits and leaves nothing for the court to do but execute on the judgment." Id. (internal quotations and citations omitted).

In the absence of a certification under Fed. R. Civ. P. 54(b), "a partial disposition of a multi-claim action or multi-party action does not qualify as a final decision under Section 1291 and is ordinarily an unappealable interlocutory order." Id. (internal quotations and citations omitted). Horton's excessive force claims are pending, and he has not obtained a Rule 54(b) certification of the order denying his false-arrest claim.

Even in the absence of a Rule 54(b) certification, an order may be subject to interlocutory appeal if it falls within the purview of the collateral order doctrine. Id. at 1246. "An order is appealable under the . . . collateral order doctrine if it (1) conclusively determines the disputed controversy, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment." Id. (citations omitted).

The denial of the motion for relief from judgment did not conclusively determine the dispute between Horton and the arresting officers because he has also asserted excessive force claims against the arresting officers as well as other police officers. The issue is not completely separate from the merits of the action because the conduct of the officers and Horton during the course of the arrest and booking procedure will be relevant to the disposition of the case. The denial of the motion is "in no danger of becoming moot if appellate

consideration is delayed until final judgment." Id. The issue is subject to review following entry of final judgment in the case. Therefore, the order denying the motion for relief is not appealable under the collateral order doctrine. The appeal is DISMISSED for lack of appellate jurisdiction.