

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4650  
Summary Calendar

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VINCENT LEE BAKER,

Plaintiff-Appellant,

versus

REGGLES, FNU, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Texas  
(6:88-CV-539)

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(March 22, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

This appeal comes to us following our earlier remand for the district court's reconsideration of whether Baker suffered a "significant injury" under the then prevailing legal standard for excessive force cases. See Baker v. Reggles, No. 90-4906, 1-4 (5th Cir. Feb. 5, 1992) (unpublished). The magistrate judge held two evidentiary hearings and issued a report in which he recommended

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

that the district judge dismiss Baker's complaint as frivolous. Baker himself requested that his action against Reggles be dismissed, acknowledging that there was no basis for his claim against Reggles. The magistrate judge credited the testimony of the defendant Arrevalos and concluded that the officers were justified in using force to quell the disturbance caused by Baker, and that the force they used was de minimis. He further concluded that Baker's neck pain was the result of a pre-existing condition, and not the result of his confrontation with Reggles and Arrevalos. The district judge adopted the magistrate judge's report and recommendations and dismissed Baker's complaint with prejudice as frivolous.

Although Baker argues that the district court erred by dismissing his complaint, the resolution of this case turned on credibility choices. There is nothing in the record before us to indicate that the magistrate judge or the district judge should be reversed. Furthermore, we cannot even review the testimony at the final evidentiary hearing held in this case without a copy of the transcript. Baker did not order a copy of the transcript, although it is his responsibility to have done so. See Fed. R. App. P. 10(b).

Finally, we note that Baker devotes much of his brief to his contention that the defendants failed to follow TDCJ's use of force policy when they applied force to him. Although the district court did not address this question, it did not err in failing to do so.

In the first place, consideration of this issue is beyond the scope of the earlier remand in this case. Furthermore, failure to follow prison regulations alone does not give rise to a constitutional claim. Hernandez v. Estelle, 788 F.2d 1154, 1158 (5th Cir. 1986).

We find no error on the part of the district court in its handling and disposition of this case, and its judgment is therefore

A F F I R M E D.