

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-5414

(Summary Calendar)

ELTON DEVILLE,

Plaintiff-Appellant,

versus

AMERICAN SUZUKI MOTOR CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-0891)

(March 1, 1994)

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

PER CURIAM:*

Proceeding pro se, Elton Deville appeals the district court's summary judgment of his product liability suit against American Suzuki Motor Corporation ("Suzuki Motor"). Finding the appeal patently frivolous, we dismiss pursuant to Local Rule 42.2.¹

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ Local Rule 42.2 provides that "[i]f upon hearing of any interlocutory motion or as a result of a review under Loc. R. 34, it shall appear to the Court that the appeal is frivolous and entirely without merit, the appeal will be dismissed."

While Deville was driving his 1991 Suzuki Swift, an object fell off a truck traveling ahead of him. The object struck the front of his car and punctured the battery, causing acid to escape. Deville allegedly suffered various physical and mental injuries from his exposure to the acid. In his product liability suit against Suzuki Motor, Deville claimed that the defective design of his 1991 Suzuki Swift, specifically the design of the car battery, proximately caused his injuries.

After more than a year of litigation, Suzuki Motor moved to strike Deville's expert witnesses and for summary judgment. The district court granted both motions. The court struck Deville's expert witnesses because of Deville's failure to disclose their identity and produce written reports within the prescribed time period. The court then granted Suzuki Motor's motion for summary judgment based on Deville's inability to set forth specific facts showing a genuine issue for trial.² Suzuki filed a timely notice of appeal.

Our review of the record demonstrates that the district court's summary judgment was correct. Moreover, Deville does not address the merits of the district court's judgment. Rather, he simply makes personal attacks against Suzuki Motor's counsel

² The district court concluded that Deville did not set forth specific facts which would raise a genuine issue regarding the requisite elements of his defective design claim: (1) that there existed an alternative design for the product that was capable of preventing his injuries; and (2) that the likelihood that the car's design would cause his injuries and the gravity of those injuries outweighed the burden on Suzuki Motor to adopt the alternative design. See La. Rev. Stat. Ann. § 9:2800.56 (West 1991).

regarding the handling of the case and baseless claims of prejudicial treatment by the district court.³ We therefore find the appeal frivolous and entirely without merit pursuant to Local Rule 42.2. See, e.g., *Spain v. National Union Fire Ins. Co.*, 906 F.2d 194 (5th Cir. 1990); *Matter of Smith*, 851 F.2d 747 (5th Cir. 1988).

Accordingly, we DISMISS the appeal. We further DENY as moot Suzuki Motor's motion to supplement the summary judgment record and Deville's opposition motion for a protective order.

³ Deville contends, *inter alia*, that Suzuki Motor's characterization of the metal object as a "pipe," rather than as an "object," was made in bad faith, that summary judgment denied him his absolute right to a jury trial, and that the district court had an absolute duty to appoint experts on his behalf.