

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

---

No. 93-7341

(Summary Calendar)

---

ROBERT MICHAEL HALLAL,

Plaintiff-Appellant,

versus

KEITH TILLMAN,

Defendant-Appellee,

RICHARD SPENCER and  
MIKE BROWN,

Intervenors-Defendants-  
Appellees.

---

Appeal from the United States District Court  
for the Southern District of Mississippi  
(CA-J92-0150(W)(N))

---

(September 9, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Robert Michael Hallal, an inmate at the Madison County Detention Center ("MCDC"), appeals the district court's adverse judgment of his civil rights claims against MCDC employees Keith Tillman, Richard Spencer, and Mike Brown. Finding no error, we

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

affirm.

Hallal filed a 42 U.S.C. § 1983 complaint against Tillman, cause number J92-0150(W)(N), alleging that Tillman violated his constitutional rights while Hallal was housed at the MCDC.<sup>1</sup> He filed a second civil rights complaint against Spencer and Brown, cause number J93-3:93-CV-210(W)(N), alleging that they used excessive force when moving him back to his cell on February 17, 1992. On the third day of the trial in cause number J92-0150(W)(N), Spencer and Brown moved to intervene in the action because the claim in the action against them was identical to a claim raised in J92-0150(W)(N). The district court granted the motion. Following a bench trial, the district court entered judgment for the defendants and dismissed the complaints with prejudice.

At the outset, we note that several of Hallal's issues on appeal attack the factual findings of the district court. Specifically, Hallal argues that the following findings were against the great weight of the evidence: (1) that his constitutional rights were not violated when he was strip-searched; (2) that his due process rights were not violated when he was placed in punitive segregation; (3) that his Eighth Amendment rights were not violated when he was not permitted to engage in any indoor or outdoor recreational activities; (4) that he was not

---

<sup>1</sup> Hallal claimed, *inter alia*, that Tillman had denied him reasonable access to the courts by not letting him use a telephone.

denied access to the courts; and (5) that the district court was not biased against him. Because the resolution of those issues necessitates a review of the trial transcript))a transcript which the appellant has not provided on appeal))we dismiss those issues from this appeal. See Fed. R. App. P. 10(b)(2) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion."); *Richardson v. Henry*, 902 F.2d 414, 415 (5th Cir. 1990) ("The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal.), *cert. denied*, 111 S. Ct. 789 (1991).

We now address Hallal's other issues on appeal. Hallal first contends that the district court erred in granting Spencer and Brown's motion to intervene and consolidate the actions. We review the district court's order granting the motion to intervene for abuse of discretion. See *Gulf States Util. Co. v. Alabama Power Co.*, 824 F.2d 1465, 1476 (5th Cir. 1987). Permissive intervention under Fed. R. Civ. P. 24(b) is proper when the claim or defense of the party seeking to intervene and the main action have a common question of law or fact. *In re W.R. Grace & Co.-Conn.*, 923 F.2d 42, 45 n.2 (5th Cir. 1991). The decision whether to consolidate causes of action is also within the discretion of the district court. *Dillard v. Merrill Lynch, Pierce, Genner & Smith, Inc.*, 961 F.2d 1148, 1161 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1046 (1993). "Consolidating actions in a district court is proper when

the cases involve common questions of law and fact and the district court finds that it would avoid unnecessary costs or delays. *Id.*

Both causes of action involved the same alleged incident of excessive force and therefore had a common question of law and fact. To the extent that Hallal argues that Spencer and Brown's motion to intervene was untimely, we note that Spencer and Brown filed their motion within a week of learning of their interest in the litigation. See *Thurman v. Federal Deposit Ins. Corp.*, 889 F.2d 1441, 1446 (5th Cir. 1989) (holding that a motion to intervene was timely when it was filed as soon as the intervenor acquired an interest in the litigation). We therefore hold that the district court did not abuse its discretion by granting the motion to intervene or in consolidating the causes of action.<sup>2</sup>

Hallal next contends that the district court erred in denying his motion for discovery made during the pretrial conference. "The district court has broad discretion on discovery matters and its rulings will be reversed only on an abuse of that discretion." *Scott v. Monsanto Co.*, 868 F.2d 786, 793 (5th Cir. 1989). The district court denied the motion as untimely. The record shows that on April 7, 1992, the district court granted his motion to proceed *in forma pauperis* and permitted his case to go forward))i.e., permitted him to conduct discovery. The pretrial

---

<sup>2</sup> Because the bench opinion issued in cause number J92-0150(W)(N) explicitly applied to Hallal's complaint in J92-0073, we reject Hallal's argument that the district court abused its discretion by failing to consolidate those causes of action.

conference was held on January 13, 1993. We therefore hold that the district court did not abuse its discretion in denying as untimely his discovery request during the pretrial conference.<sup>3</sup>

Lastly, Hallal contends that the district court erred in denying his motion for a continuance during the first day of trial. In support of his motion, Hallal argued that he needed a continuance to interview his wife, to review the records and obtain witnesses, and to be entitled to effective assistance of counsel. "We review the district court's decision to deny a motion for continuance for an abuse of discretion. That discretion is `exceedingly wide.'" *Command-Aire v. Ontario Mechanical Sales & Serv.*, 963 F.2d 90, 96 (5th Cir. 1992) (citations omitted).

At the pretrial conference, the parties stipulated to the substance of Hallal's wife's testimony. Thus, Hallal did not have to interview her before she testified. Hallal also had four days between the first and second day of trial, and three days between the second and third day of trial, to review the records. Hallal does not indicate what witnesses he was unable to call and what evidence he was unable to present because of the denial of the motion for continuance. To the extent that he argues that the denial of the motion denied him effective assistance of counsel, we note that there is no Sixth Amendment right to effective counsel in

---

<sup>3</sup> Even if Hallal did not understand that he was permitted to conduct discovery, he has not indicated what information he required but did not receive. Thus, Hallal cannot show any prejudice from the court's denial of his discovery request. Consequently, any error in denying his discovery request was harmless. See Fed. R. Civ. P. 61. Furthermore, because Hallal has not demonstrated how he was prejudiced by the court's failure to ensure the presence of Willie Polk at trial, any error in this context was also harmless. See *id.*

a civil case. *Sanchez v. United States Postal Serv.*, 785 F.2d 1236, 1237 (5th Cir. 1986). We therefore hold that the district court did not abuse its discretion by denying the motion for continuance.

Accordingly, we AFFIRM the judgment of the district court.