

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7596
Summary Calendar

BERTHA LEE BELL,
Administratrix of the Estate of
Robert Anderson, Jr., Deceased, et al.,
Plaintiffs,

VERSUS

BOLIVAR COUNTY, MISSISSIPPI, et al.,
Defendants,

BOLIVAR COUNTY, MISSISSIPPI,
H. M. MACK GRIMMETT,
Individually and in His Official Capacity
as Sheriff of Bolivar County, Mississippi,
TOMMIE HARVEY,
Individually and in His Official Capacity as Jailer,
RICKY HAYWOOD,
Individually and in His Official Capacity as Jailer,
Defendants-Third Party
Plaintiffs-Appellants,

and

GENERAL LIFE & CASUALTY INSURANCE COMPANY
and
BOLIVAR COUNTY BOARD OF SUPERVISORS,
Defendants-Appellants,

VERSUS

MISSISSIPPI DEPARTMENT OF CORRECTIONS,
LEE ROY BLACK,
Individually and in His Official Capacity as
Commissioner of State Department of Corrections, et al.,
Third Party Defendants,
Appellees,

* * * * *

M. C. ROBINSON, By and Through
ETHEL ROBINSON,
His Mother and Next Friend, et al.,
Plaintiffs,

VERSUS

BOLIVAR COUNTY, MISSISSIPPI, et al.,
Defendants.

Appeal from the United States District Court
for the Northern District of Mississippi
(DC89-151-S) c/w DC89-152-S-0))

(May 20, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

In this action raising civil rights and state claims, the third-party plaintiffs appeal the dismissal of their complaint. Finding no error, we affirm.

I.

Bertha Bell, as administratrix of Robert Anderson's estate, and Vera Jean Anderson, individually and on behalf of Robert Anderson's heirs, filed a state wrongful death action, and Ethel

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 Pursuant to that rule, the court has determined that this opinion should not be published.

Robinson filed a state tort action for personal injuries on behalf of M.C. Robinson. The suits alleged that Robert Anderson and Robinson were incarcerated in the Bolivar County Jail and that Anderson was raped, sexually assaulted, and killed and that Robinson was beaten, raped, and sexually assaulted. Both suits named Bolivar County, Mississippi, and its sheriff, H.M. "Mack" Grimmett, as defendants. Defendants removed the actions to federal court as cognizable under 42 U.S.C. § 1983.

Defendants filed a motion to bring in as third-party defendants numerous Mississippi state officials and agencies pursuant to FED. R. CIV. P. 14, claiming that they were responsible for and contributed to the alleged incidents on account of the overcrowded jail conditions. The defendants/third-party plaintiffs sought compensatory damages, punitive damages, and declaratory and injunctive relief.

The plaintiffs objected to defendants' request to implead the third-party defendants, arguing in part that bringing in the third-party defendants would defeat their right to an expeditious adjudication of their claims and would prolong discovery, complicate the trial, and consume a large amount of time. Plaintiffs urged the district court to exercise its discretion and deny the motion to bring the third-party claim. The district court consolidated the two actions and denied the request to strike the third-party complaint.

Third-party defendants filed a motion to dismiss the third-party complaint. At a hearing on that motion, the court stated

that the third-party complaint failed to state a claim upon which relief could be granted under FED. R. CIV. P. 12(b)(6), that it was going to dismiss the third-party complaint, and that an opinion would be forthcoming. The court then issued an order and opinion granting the motion and dismissing the complaint without prejudice.

The case proceeded between the original plaintiffs and defendants and eventually was dismissed because the parties reached a settlement. Defendants/third-party plaintiffs filed a motion to alter or amend the judgment, seeking reinstatement of their third-party complaint, which the district court denied. Defendants/third-party plaintiffs now appeal.

II.

Appellants argue that the district court abused its discretion. FED. R. CIV. P. 14 provides for a third-party action, which a defendant may file against any person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claims against the third-party plaintiff. Any party may move to strike the third-party claim. FED. R. CIV. P. 14. The district court has wide discretion in determining whether to strike a third-party complaint. McDonald v. Union Carbide Corp., 734 F.2d 182, 184 (5th Cir. 1984). We remand for further consideration if it appears that in the exercise of its discretion, the district court acted on an erroneous theory. Southern Ry. v. Fox, 339 F.2d 560, 563-64 (5th Cir. 1964).

In the opinion accompanying its order striking and dismissing the third-party complaint, the district court stated that during the course of the hearing on the third-party defendants' motion to dismiss, it became apparent that the plaintiffs' motion to strike should have been granted. The court held that to allow the third-party action to proceed would delay the existing action and prejudice the original plaintiffs. The court also noted that it had concerns about the merits of the third-party claims. The court found that the better course was to dismiss the third-party complaint without prejudice in order to protect the interests of the plaintiffs and get the case quickly on track.

At the hearing, the court noted that it seemed that the issue of the defendants' liability to the plaintiffs should be tried first before the court got into determining the rights between the defendants/third-party plaintiffs and the third-party defendants. The third-party plaintiffs admitted that there was no reason why they would forfeit their action against the third-party defendants if the court dismissed the third-party complaint.

The court described the third-party action as ancillary and peripheral. The third-party defendants argued that the claims in the third-party complaint should be asserted in a separate lawsuit. They asserted that joining the third-party claims with the plaintiffs' claims in a single jury trial would present insurmountable obstacles, and they pointed out that Bolivar County could assert its cause of action against the state defendants separately, if and when the plaintiffs obtained a judgment.

As the district court dismissed the third-party complaint without prejudice, the court noted in its order denying the motion to alter or amend that appellants were free to file their complaint as a separate action. Appellants do not explain how they were prejudiced by having to maintain this action separately instead of as part of the plaintiffs' lawsuit. They do not argue that the reasons given by the district court for dismissing their complaint were based upon an erroneous theory. Their arguments focus on the merits of their complaint. The district court did not abuse its discretion.

To the extent that appellants' brief argues the merits of their third-party complaint, those arguments are irrelevant and need not be addressed in order to affirm the district court's judgment. The district court dismissed the third-party complaint upon the basis of prejudice to the plaintiffs' lawsuit and not upon the merits of appellants' claims. The judgment of dismissal is AFFIRMED.