

IN THE UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-9061  
(Summary Calendar)

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LARRY HILL,

Plaintiff-Appellant,

versus

BEN F. TAHMAKERA, Tarrant County Jail Captain,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:92 CV 80 E)

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(October 3, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM<sup>1</sup>:

Larry Hill, a Texas state prisoner, appeals the judgment of the trial court dismissing his § 1983 claim without the conduct of any discovery. For the following reasons, the judgment of the trial court is affirmed.

BACKGROUND

Larry Hill filed this § 1983 claim for damages arising out of an early morning incident with prison guards on January 9, 1992.

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

While being served breakfast, Hill apparently threw hot coffee on a security guard and prison trustee. Several prison guards were called in and entered Hill's cell where he was placed in handcuffs and leg irons. After he had eaten breakfast in the handcuffs and leg irons, he was released. The report of the incidents filed by the officers state that Hill was not injured in the incident and that Hill, himself, states that he only suffered some bruises and minor cuts.

Hill filed a § 1983 claim against the prison guards, alleging that the prison guards had used excessive force against him. Although several defendants were named in the suit, only Captain Ben F. Tahmakera, who was in charge of the team that restrained Hill, was actually served. During the course of the proceedings, Hill moved for the appointment of counsel. The trial court denied the motion. Before discovery took place, Tahmakera filed a motion for summary judgment arguing that the doctrine of qualified immunity barred further prosecution of the suit. The trial court granted the motion. Hill appeals asserting three grounds of error.

## DISCUSSION

### 1. Appointment of Counsel

Hill contends that the trial court erred in denying the appointment of trial counsel. Barring exceptional circumstances, Hill has no right to appointed counsel. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). Such an appointment is within the district court's discretion. Id. at 213. Considerations include the type and complexity of the case and the plaintiff's ability to investigate and present his case. Id. This case presents no

exceptional circumstances nor has Hill alleged that any exist. The claims and allegations in this case arise out of a small incident that lasted not more than forty-five minutes. We find that the trial court did not abuse its discretion in its decision not to appoint counsel.

## 2. Failure to Allow Discovery

Hill contends that the trial court erred in granting summary judgment without allowing discovery. On a motion for summary judgment, a non-moving party who needs more time to obtain discovery may request a continuance pursuant to Fed. R. Civ. P. 56(f). International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1266 (5th Cir. 1991), cert. denied, 112 S.Ct. 936 117 L.Ed.2d 107 (1992). The district court has no obligation to grant additional time for discovery without a request from the non-moving party. Id. at 1266. The party seeking a continuance must show how additional discovery will create a genuine dispute as to a material fact and may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts. Id. at 1267. These requirements apply even to pro se litigants. See Fultz v. Collins, No. 92-5214 at 2, 4-5 (Aug. 20, 1993). This court reviews the district court's ruling on a rule 56(f) motion for abuse of discretion. Id.<sup>2</sup>

Although Hill did move for a continuance, he did not show how additional discovery would create a genuine dispute as to a

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<sup>2</sup>Contrary to Hill's assertion, there is no requirement that the district court should have notified him of the general summary judgment requirements because he is pro se. Martin v. Harrison County Jail, 975 F.2d 192, 193 (5th Cir. 1992)

material fact, and his request was a vague assertion without specific facts. In his brief, Hill also does put forth any facts or allegations which would require discovery and which would create a genuine dispute as to a material fact. We therefore find that the trial court did not abuse its discretion in granting the motion for summary judgment without the allowance of discovery.

### 3. Improper Grant of Summary Judgment

Hill contends that the grant of summary judgment was improper. Beyond arguing that summary judgment was improper because he did not have an opportunity to conduct discovery, he has failed to assert any reasons why summary judgment was not proper. Therefore, any further arguments regarding summary judgment are deemed abandoned and not properly before this Court. See Brinkman v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

### CONCLUSION

For the foregoing reasons, the judgment of the trial court is AFFIRMED.