UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10343
Summary Calendar

GABRIEL AKASIKE,

Plaintiff-Appellant,

versus

MICHAEL FITZPATRICK, Warden,
FCI Big Springs, ET AL.,

Defendants,

SONNY KEESEE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CV-140-C)

(February 7, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Gabriel Akasike, *pro se* and *in forma pauperis* (IFP), appeals from an adverse judgment in his civil rights action under 42 U.S.C. § 1983. We **AFFIRM**.

I.

In June 1993, Akasike filed a § 1983 IFP civil rights action against Keesee (Sheriff of Lubbock County) and Fitzpatrick (Warden

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 Pursuant to that rule, the court has determined that this opinion should not be published.

of the Federal Correctional Institute at Big Spring, Texas), alleging that, in June 1992, while incarcerated as a federal prisoner, he was transferred to the Lubbock County Jail and placed under the control of Sheriff Keesee; that, while under Keesee's control, he was attacked by other inmates and received extensive injuries as the result of Keesee's callous indifference to his safety and welfare; that, upon his release from the hospital after treatment for those injuries, he was segregated from other inmates at the jail and left in isolation for an extended stay, in "an apparent effort to cause mental distress and anxiety"; and that he received poor medical attention while in isolation.

Pursuant to 28 U.S.C. § 1915(d), the district court dismissed promptly Akasike's claims. In late October 1993, our court affirmed as to Fitzpatrick, but vacated and remanded for further development of the claims against Keesee. On remand, Keesee moved for summary judgment, which the district court granted, in part, and denied, in part. Following a bench trial, the district court entered judgment for Keesee.

II.

Following remand, this action was reinstated in district court in late November 1993. Akasike contends that the district court erred by denying his motions for continuance, to join parties, and to amend his pleadings; by granting judgment for Keesee; by refusing to admit evidence at trial; by failing to exclude witnesses from the courtroom during trial; by refusing to allow him

to present a witness at trial; and by ordering him to be brought to the Lubbock County Jail prior to trial.

A.

Akasike moved for a continuance on March 1, 1994, asserting that the prison law library was not well-equipped, and that he needed "a continuance to secure an experienced attorney outside Lubbock County who will have no problem of conflict of interest". The motion was denied because Akasike failed to serve a copy on Keesee's counsel. Akasike's second continuance motion re-asserting the same grounds, was denied on March 22; a third, seeking reconsideration of the earlier denials, was denied on May 6.

The denial of a continuance is reviewed only for abuse of discretion, and the district court's discretion is "exceedingly wide". ***Fontenot v. Upjohn Co.***, 780 F.2d 1190, 1193 (5th Cir. 1986). Akasike fails to explain how a continuance would have remedied the alleged inadequacies of the prison law library, and offers nothing to support his assertion that he needed additional time to obtain an attorney. He filed his *pro se* complaint on June 3, 1993, approximately nine months prior to his first post-remand request for a continuance. His conclusory assertion that he could not obtain an attorney in Lubbock County, because each had a conflict of interest, is speculative, at best, and borders on being frivolous. He has not shown an abuse of discretion.

B.

As noted, following remand, this action was reinstated in district court on November 23, 1993. On December 15, the court

entered a scheduling order that all motions to join other parties and amend pleadings be filed by March 1, 1994.

On March 31, nearly a month after the expiration of that deadline, Akasike moved to join additional defendants and to amend his complaint to assert additional claims against them. The district court denied the motions because they failed to comply with the local rules and because they were filed after the applicable deadline. Akasike filed another set of motions to join parties and amend pleadings on May 5. Both motions were denied.

"[T]he decision to grant or to deny a motion for leave to amend lies within the sound discretion of the trial court." ***Daly v. Sprague***, 742 F.2d 896, 900 (5th Cir. 1984). Akasike has shown no abuse of discretion. In fact, his attempt to join additional defendants and add additional claims arguably is beyond the scope of our remand, which specified only that it was for the purpose of further development of the claims against Keesee. *See* ***id***. at 900. Moreover, even if consideration of additional claims against additional parties was not outside the scope of the remand, the district court had discretion to deny the motions because they were untimely. *See* ***Whitaker v. City of Houston***, 963 F.2d 831, 836-37 (5th Cir. 1992).

C.

Akasike contends that the district court erred by entering judgment for Keesee on the Eighth Amendment and due process claims. But, in support, he offers only his version of the trial testimony.

If an 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." Fed. R. App. 10(b)(2). This rule applies to *pro se* appellants as well as those represented by counsel. *See* ***Powell v. Estelle***, 959 F.2d 22, 26 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 668 (1992). We will not consider the merits of an issue when the appellant fails in that responsibility. ***Id***.

Akasike has not provided a trial transcript.[2] Accordingly, we cannot consider his contentions. *See* ***Alizadeh v. Safeway Stores, Inc.***, 910 F.2d 234, 237 (5th Cir. 1990).

But, even were a transcript available, Akasike's contentions would be inappropriate. His brief contains only conclusory assertions that he proved his case, based on his own version of the evidence; he makes no effort to show how the district court's factual findings were clearly erroneous. *See* Fed. R. Civ. P. 52(a).

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[2] Akasike filed a notice of appeal from the denial of pretrial motions on April 8, 1994. Trial was conducted on June 22 and 23, and judgment entered on June 23. Akasike filed a second notice of appeal, from the "ruling on the trial", on July 6. On August 2, he requested a trial transcript in the district court; the request was denied that same day. Akasike then requested a transcript through our court; but, because his initial appellate brief, filed on July 11, indicated that he was appealing only the denial of various pretrial motions, the request was denied on September 7. On September 14, Akasike moved for reconsideration. Two days later, he filed a supplemental brief, contending that the district court erred by failing to find due process and Eighth Amendment violations. Our court denied reconsideration of the transcript request on September 29.

Akasike's requests for a transcript were untimely. *See* Fed. R. App. P. 10(b) (transcript must be ordered within ten days after filing notice of appeal). He did not request a transcript in the district court until nearly a month after he appealed from the final judgment; and, before our court had a chance to rule on his motion for reconsideration of its denial of his renewed request, he filed a supplemental brief containing his own version of what occurred at trial. If his request for reconsideration had been granted, it would have necessitated the filing of yet another brief, in addition to the two he had already filed. We will not tolerate such tactics, even by *pro se* appellants. Akasike had ample time to decide whether to challenge the evidentiary support for the district court's rulings and to furnish the district court or this court with the information necessary for an informed decision as to whether he needed a transcript for his appeal. *See* ***Richardson v. Henry***, 902 F.2d 414, 416 (5th Cir.), *cert. denied*, 498 U.S. 901 (1990) *and* 498 U.S. 1069 (1991).

D.

Akasike next contends that the district court erroneously denied a motion for continuance during trial, refused the introduction of evidence regarding destruction of his mail, failed to exclude witnesses from the courtroom pursuant to Fed. R. Evid. 615, and denied him an opportunity to present witnesses. These issues cannot be resolved without a trial transcript which, as stated, was Akasike's responsibility to provide. Fed. R. App. P. 10(b). Because he did not do so, we cannot consider these challenges. *See* ***Alizadeh***, 910 F.2d at 237.

E.

Finally, Akasike contends that the district court erroneously ordered him brought to the Lubbock County Jail one month prior to trial, which interfered with his ability to prepare for it. This contention is frivolous.

On December 15, 1993, the district court set the case for trial on June 6, 1994, and ordered that Akasike be brought to the jail "on June 3, 1994, or as soon thereafter as possible." On March 1, 1994, the June 6 trial date was modified to June 13; trial commenced on June 22. The district court ordered Akasike brought to the jail because his appearance at trial was required in this lawsuit, which he filed.

III.

For the foregoing reasons, the judgment is

AFFIRMED.