UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-10373
Summary Calendar

GERARD HENNESSEY,

Plaintiff-Appellant,

LINDA ANN VEGA,

Appellant,

versus

L. J. BLALACK, et al.,

Defendants,

L. J. BLALACK,

Defendant-Appellee.

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GERARD HENNESSEY,

Plaintiff-Appellant,

L. J. BLALACK, et al.,

Defendant-Appellee.

Appeals from the United States District Court
for the Northern District of Texas
(5:93-CV-78-C/5:94-CV-074-C)

(January 26, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[1]

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide

Hennessey appeals the dismissal of his **pro se** § 1983 complaint against L. J. Blalock, a former justice of the peace for Lubbock County, Texas. We affirm.

I.

Hennessey's claims against Blalack arose from an altercation occurring in Blalack's courtroom. Hennessey sought access to complaints filed in Blalack's court by a local attorney. After a heated exchange between Hennessey and Blalack, Blalack charged Hennessey with contempt and requested a deputy sheriff to place him in custody. Before Blalack was escorted out of the courtroom, however, Blalack withdrew the contempt citation and instructed the bailiff to release Hennessey. Blalack later instructed his court clerks to prepare affidavits stating that Hennessey had been loud and abusive. Several clerks subsequently informed law enforcement officers that Blalack "coached" their affidavits. Blalack was later indicted for perjury and false arrest.

Hennessey's § 1983 complaint alleges that Blalack's contempt citation violated Hennessey's constitutional rights and that Blalack conspired with his court clerks to deprive him of his constitutional rights by preparing false and defamatory affidavits. Hennessey's complaint further alleges that other state and Lubbock County officials conspired to prevent him from successfully petitioning for Blalack's removal from office and that Lubbock County officials were operating a corrupt enterprise through which

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

excessive fines were funnelled to them in violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 (RICO).

The district court entered Rule 54(b) orders dismissing most of the defendants and dismissing some of Hennessey's claims against the remaining defendants, including Hennessey's RICO claim. The district court then granted summary judgment against Hennessey on the remaining claims. Hennessey filed numerous appeals of the district court's Rule 54(b) orders dismissing claims and defendants. In a previous unpublished decision, **Hennessey v. Blalack**, Nos. 93-1808, **etc.** (5th Cir. Aug. 30, 1994) ("**Hennessey I**"), we affirmed the district court's dismissal of the claims against the court clerks and county officials. We also affirmed the district court's dismissal of Hennessey's RICO claim. The primary issue raised by the present appeal is whether the district court erred in granting Blalack summary judgment on the basis of judicial immunity.[2]

II.

[2] Hennessey's brief also discusses many of the claims of error decided by this court in **Hennessey I**, including Hennessey's claims that (1) the district court erred by denying his RICO claim before discovery had been completed, (2) the district court erred in denying his motion for class certification, and (3) the district court erred in refusing to allow the joinder of claims brought by Linda Ann Vega. To the extent that Hennessey seeks to reargue these claims, our decision in **Hennessey I** constitutes the "law of the case." Consequently, we need not reexamine Hennessey's arguments. **See Chevron U.S.A., Inc. v. Traillour Oil Co.**, 987 F.2d 1138, 1150 (5th Cir. 1993).

A.

Hennessey first contends that the district court erred in concluding that Blalack was entitled to judicial immunity for the contempt citation. Judges presiding over courts of general jurisdiction are absolutely immune from damage suits for "judicial acts" provided that they do not act in "clear absence of all jurisdiction." **Stump v. Sparkman**, 435 U.S. 349, 356-57 (1978). Judicial immunity extends to justices of the peace even though they do not exercise "general jurisdiction." **Brewer v. Blackwell**, 692 F.2d 387, 396 (5th Cir. 1982). Whether an act is judicial in nature turns on following factors: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. **Malina v. Gonzales**, 994 F.2d 1121, 1124 (5th Cir. 1993).

Hennessey first argues that Blalack is not entitled to judicial immunity because the contempt citation was not judicial in nature. According to Hennessey, he did not appear before Blalack on a judicial matter and was not a party to any of the cases pending in Blalack's court. In response, Blalack argues that contempt citations are inherently judicial because they implicate a judge's power to supervise and maintain order in the courtroom.

We agree that Blalack's contempt citation was a judicial act under the criteria set out in **Malina**. First, contempt citations are

"normal judicial functions." **Malina**, 994 F.2d 1121. Moreover, the incidents precipitating the contempt citation occurred in Blalack's courtroom and involved Hennessey's attempt to obtain information concerning several complaints filed in Blalack's court. Finally, Hennessey's contention that the contempt citation did not arise out of a visit to Blalack in his official capacity is meritless. As justice of the peace, Blalack was officially responsible for maintaining the records of the court. **See Tex. Gov't Code Ann.** § 27.004 (Vernon 1988). Consequently, Hennessey's appearance before Blalack in his courtroom should have placed Hennessey on notice that he was appearing before Blalack in his official capacity as justice of the peace. **See Harper v. Merckle**, 638 F.2d 848, 859 (5th Cir.), **cert. denied**, 454 U.S. 816 (1981)(concluding that the parties' expectations should be considered in deciding whether an appearance before a judge is in the judge's official capacity).

Hennessey also argues that Blalack lacked jurisdiction to issue the contempt citation because he did not provide Hennessey with notice or hold a hearing before citing him with contempt. This argument is similarly without merit. In **Ex parte Krupps**, 712 S.W. 2d 144, 146-48 (Tex. Crim. App.), **cert. denied**, **Krupps v. Texas**, 479 U.S. 1102 (1987), the Texas Court of Criminal Appeals held that a contempt citation based on actions occurring in the presence of the court does not require prior notice or a hearing. Accordingly, neither notice nor a hearing was required under Texas law because the events leading up to the contempt citation occurred in Blalack's presence.

Finally, Hennessey contends that the district court erred in granting summary judgment on the basis of Blalack's sworn affidavit because Blalack was indicted for perjury. Hennessey also alleges that Blalack's affidavit "conflicts substantially" with the affidavits offered by the other defendants. This claim is similarly without merit. The facts necessary to decide whether Blalack is entitled to judicial immunity are largely undisputed and appear in the allegations of Hennessey's complaint. While Hennessey asserts that Blalack's affidavit conflicts with the other affidavits, he fails to specifically identify any disputed facts relevant to deciding whether judicial immunity applies to Blalack's actions. "Factual disputes that are irrelevant or unnecessary will not be counted" in deciding whether the parties' affidavits create a genuine issue of material fact. **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 248 (1986). Therefore, we conclude that the district court did not err in granting summary judgment as to the contempt citation based on judicial immunity.

B.

Hennessey also contends that the district court erred in granting summary judgment without considering whether Blalack was entitled to judicial immunity for ordering his court staff to prepare allegedly false and defamatory affidavits. Hennessey contends that Blalack is not entitled to immunity because the preparation of the affidavits was not a "judicial act." Rather,

Hennessey alleges that Blalack ordered his staff to prepare the affidavits to thwart a state investigation of his conduct.

We need not decide whether Blalack is entitled to judicial immunity for his actions because Hennessey fails to show that the preparation of the affidavits deprived him of a recognized liberty or property interest within the purview of the Fourteenth Amendment. **Doe v. Taylor Indep. School Dist.**, 15 F.3d 443, 450 (5th Cir.), **cert. denied**, ___ U.S. ___, 115 S. Ct. 70 (1994). Hennessey argues that the affidavits humiliated him and defamed his reputation, and that Blalack used the affidavits to obstruct an official state investigation. However, the "invasion of an interest in reputation alone is insufficient to establish § 1983 liability because a damaged reputation, apart from injury to a more tangible interest such as loss of employment, does not implicate any `liberty' or `property' rights sufficient to invoke due process." **Geter v. Fortenberry**, 849 F.2d 1550, 1556 (5th Cir. 1988)(citation omitted).

Hennessey does not allege that Blalack used the affidavits to diminish his employment opportunities or to harm any other tangible interest. Furthermore, while the use of perjured testimony to facilitate an adjudication of guilt may give rise to a claim under § 1983, Hennessey does not allege that Blalack used the affidavits to facilitate an adjudication of guilt. **See Johnson v. Odom**, 910 F.2d 1273, 1277 (5th Cir.), **cert. denied**, 499 U.S. 936 (1991). We conclude, therefore, that the district court did not err in granting Blalack summary judgment.

AFFIRMED.