

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10888
Summary Calendar

GLEN C. JAMES,

Plaintiff-Appellant,

versus

JIM MINTER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 42:92-CV 633-E, C/W 4:92-CV-829-Y
& 4:92-CV-909-E

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(February 8, 1995)

Before DAVIS, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

On September 9, 1994, the district court entered an order denying the plaintiff's motions for injunctive and declaratory relief; for appointment of counsel; to amend his complaints; for the judge to tour the Tarrant County jail, and granting the defendants' motion for summary judgment on the denial-of-access-to-the-courts and inadequate and unsanitary food claims. The district court also ordered the plaintiff to file an amended complaint. The plaintiff filed a notice of appeal from this

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

order on September 15, 1994.

Although the September 9, 1994, order does not dispose of the litigation, portions of the order, including the denial of injunctive relief and appointment of counsel, are immediately appealable interlocutory orders. See 28 U.S.C. § 1292(a)(1); Robbins v. Maggio, 750 F.2d 405, 412 (5th Cir. 1985). The order, however, contains the analysis and the reasons for the decision and is therefore not a "separate document" judgment as required by Fed. R. Civ. P. 58. "[A] statement tacked on at the end of an opinion . . . is considered part of the opinion, and is not properly a judgment until it is set forth on a separate document." See 6A J. Moore, J. Lucas, G. Grotheer, MOORE'S FEDERAL PRACTICE, ¶ 58.02, at 58-11, -17 (2d Ed. 1991) (footnote omitted). See also Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978). The separate document requirement of Rule 58 applies to appealable interlocutory orders. Silver Star Enter., Inc. v. M/V SARAMACCA, 19 F.3d 1008, 1012 n.4 (5th Cir. 1994).

Although the separate document requirement is not jurisdictional and may be waived, see Barnhardt Marine Ins., Inc. v. New England Int'l Surety of America, Inc., 961 F.2d 529, 531 (5th Cir. 1992), the defendants have challenged the court's jurisdiction because the order does not comply with Rule 58, and the appeal must be dismissed. Seal v. Pipeline, Inc., 724 F.2d 1166, 1167 (5th Cir. 1984).

Accordingly, the appeal is dismissed pursuant to the procedure set out in Townsend v. Lucas, 745 F.2d 933, 934 (5th Cir. 1984). The plaintiff may rectify the lack of a separate

document judgment by a motion to the district court for entry of judgment. He may then appeal from the judgment within the time prescribed by Fed. R. Civ. P. 4(a)(1). See Townsend, 745 F.2d at 934.

APPEAL DISMISSED.