IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11052

WILLIAM BRYAN FROUST,

Plaintiff-Appellant,

versus

SCURRY COUNTY, TX, SHERIFF OF, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

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June 11, 1996

Before GARWOOD, DAVIS and DeMOSS, Circuit Judges.[*]

PER CURIAM:

After consideration of the arguments, briefs, and record, this Court determines that no reversible error has been demonstrated in the dismissal of appellant's suit.

Among other things, it is evident that appellant suffered no prejudice from the claimed denial of access to the courts. *See Henthorn v. Swinson*, 955 F.2d 351, 354 (5th Cir.), *cert. denied*, 112 S.Ct. 2974 (1992). Appellant's claim in this respect was based

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[*]Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

on his alleged inability to adequately respond to a motion to dismiss filed in his pending civil rights case on July 15; he had a twenty-day period in which to respond to the motion. He filed his response on July 19, and was transferred out of defendants' facility (where he was only sixty days in all) on July 20; on July 26 appellant filed a motion for summary judgment in his civil rights case. That suit was pending before the same district court (and district judge) as that in which the instant suit is pending. Appellant claimed that because he lacked legal assistance, his response was not what it could have been, with the result that the motion to dismiss was granted in part on August 10. Appellant identifies no deficiency in his response, nor how the partial dismissal would have been avoided had the response been other than what it was or had appellant been afforded legal assistance. The magistrate judge took judicial notice that in the other suit the motion to dismiss was granted in part as to claims against Sheriff Dieken. Following our earlier remand, the defendants filed an amended answer asserting, among other things, that after August 10 appellant had been allowed to file an amended complaint against Dieken in the other case, and that it was still pending, and hence appellant had suffered no prejudice. Responding to this answer, appellant did not dispute those allegations, and indeed admitted that Dieken had been reinstated as a defendant in the other case.

The judgment of the district court is

AFFIRMED.