

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20167
Summary Calendar

JIM BATH,

Plaintiff-Appellant-
Appellee,

VERSUS

H.M. BENHAM,

Defendant-Appellee.

and

SOUTHWEST AIRPORT SERVICES, INC.,

Intervenor-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 93 0108)

(November 30, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

In this matter decided by a magistrate judge under 28 U.S.C. § 636(c), the plaintiff, Jim Bath, appeals a summary judgment, and the intervenor, Southwest Airport Services, Inc., has filed a

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 Pursuant to that rule, the court has determined that this opinion should not be published.

protective appeal that it wishes to pursue only if we reverse the summary judgment. We affirm, essentially for the reasons stated by the magistrate judge in her comprehensive Memorandum and Order and Final Judgment entered February 7, 1994.

Bath seeks enforcement of an alleged oral agreement giving him an option to purchase stock in Trans-Oceanic, Inc. The magistrate judge correctly concluded that the agreement is unenforceable because it violates the statute of frauds, TEX. BUS. & COM. CODE ANN. § 8.319 (Vernon 1991), and further because Bath is not entitled to the exception set forth in id. § 8.319(2), in that Bath's services did not constitute payment for the stock.

The magistrate judge properly concluded that, as a matter of law, there was no "confidential relationship" that would invoke equity. The magistrate judge also did not err in observing that Bath's "fraud claim here is . . . nothing more than an attempt to enforce an unenforceable oral promise" and, accordingly, is barred by the statute of frauds. As the contract is unenforceable, Bath is not entitled to specific performance. Nor is he entitled to recovery in quantum meruit, as he has acknowledged that he never expected to be paid for his services.

All of these grounds are carefully explained in the magistrate judge's opinion. The only error we find is a technical one. The magistrate judge erred in combining her statement of reasons with a final judgment: At the end of the twelve-page opinion, the magistrate judge states, "This is a FINAL JUDGMENT." No separate document has been entered that constitutes a final

judgment, despite the requirement of FED. R. CIV. P. 58 that "[e]very judgment shall be set forth on a separate document."

We enforce the separate document requirement and often dismiss appeals when the requirement has not been met. See, e.g., Britt v. Whitmire, 956 F.2d 509, 515-16 (5th Cir. 1992). Where the intent to enter a final judgment is obvious, however, and no party has raised objection to our jurisdiction, we treat the judgment as final and appealable, based upon the latitude granted by Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978) (per curiam). For that reason alone, we have jurisdiction in this appeal. Nonetheless, we expect district judges and magistrate judges to comply strictly with the rule 58 requirement.

The judgment is in all respects AFFIRMED.