

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40057
Conference Calendar

GRAYDON GWYN,

Plaintiff-Appellant,

versus

STEVE RADER ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 93-CV-870
- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Graydon Gwyn filed a civil rights complaint against Louisiana and Texas officials alleging that his constitutional rights were violated when he was transferred from Louisiana custody to Texas custody without an extradition hearing. The district court granted the defendants' motions for summary judgment and dismissed the complaint with prejudice.

Gwyn argues that the district court prematurely granted summary judgment for the Louisiana defendants because he did not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

have sufficient time to review the discovery responses from these defendants before the district court granted summary judgment. Once a motion for summary judgment has been filed, a nonmoving party may seek a continuance if the party believes that additional discovery is necessary to respond to the motion. Fed. R. Civ. P. 56(f); International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1266 (5th Cir. 1991), cert. denied, 112 S.Ct. 936 (1992). The nonmoving party must show how the additional discovery will defeat the summary judgment motion. Id. at 1267.

Gwyn has not indicated what information in the discovery responses was necessary to prepare his response to the summary judgment motion. He has failed to show that additional discovery was necessary to establish any issue of material fact which would preclude summary judgment. See NGS American, Inc. v. Barnes, 998 F.2d 296, 300 (5th Cir. 1993).

Gwyn also argues that he never received a copy of the Louisiana defendants' motion for summary judgment. Gwyn alleged in the district court that he did not receive a copy of the motion, but he also indicated that he assumed the Louisiana defendants were raising the same arguments as the Texas defendants and would respond to those arguments. A review of the two motions indicates that both the Louisiana and the Texas defendants argued that Gwyn waived extradition and therefore the transfer of custody was proper. Gwyn cannot demonstrate any prejudice if he did not receive a copy of the motion.

Gwyn also argues that the district court did not give him sufficient notice before ruling on the Texas defendants' motion

for summary judgment. The district court must give the parties ten days notice that it intends to rule on the motion for summary judgment to permit the parties to submit additional evidence. Fed. R. Civ. P. 56(c). The district court issued an order setting the date for ruling on the Texas defendants' motion for summary judgment, and Gwyn filed a response well before the district court granted the motion. Gwyn has not shown that he received inadequate notice.

This Court reviews the district court's grant of summary judgment de novo. Weyant v. Acceptance Ins. Co., 917 F.2d 209, 212 (5th Cir. 1990). Summary judgment is appropriate when, considering all of the facts in the pleadings, depositions, admissions, answers to interrogatories, and affidavits, and drawing all inferences in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Newel v. Oxford Management, Inc., 912 F.2d 793, 795 (5th Cir. 1990). There is no genuine issue of fact if taking the record as a whole a rational trier of fact could not find for the nonmoving party. Id.

The summary judgment evidence established that Gwyn waived extradition as a condition of his administrative release. Therefore, the transfer of custody from Louisiana to Texas without extradition proceedings was proper. The district court properly granted summary judgment for the defendants.

The district court also properly denied Gwyn's motion for appointment of counsel. There is no automatic right to

appointment of counsel in a civil rights case. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district court has the discretion to appoint counsel for a plaintiff proceeding pro se if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d). This case did not present "exceptional circumstances" warranting appointment of counsel, and the district court did not abuse its discretion by denying the motion.

AFFIRMED.