IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

_____

No. 94-40200
Summary Calendar
_____

LEE S. WILLIAMS, JR.,

Plaintiff-Appellant,

versus

H. W. FITZGERALD and T. MURPHY,

Defendants-Appellees.

_____

Appeal from the United States District Court for the
Eastern District of Texas
(6:93-CV-432)
_____
(November 2, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

In this appeal of a § 1983 civil rights case, Lee S. Williams, a Texas state prisoner complaining of deliberate indifference to his serious medical needs, contends that the district court improperly granted summary judgment to the defendants because: 1) it did not allow him to amend his original complaint, 2) he did not receive liberal construction of his pleadings, 3) he was not notified of the possibility of dismissal pursuant to Fed. R. Civ.

_____

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

P. 56, and 4) he was not allowed proper discovery. We affirm the
district court.

Williams first asserts that the district court improperly
granted summary judgment without allowing him an opportunity to
amend his complaint. His argument is factually frivolous. He
never moved to amend his complaint in the district court.

Williams next contends that the district court failed to
accord his pleadings a liberal construction pursuant to Haines v.
Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).
This argument is also factually frivolous. On two occasions, the
district court construed Williams's motions in an extremely liberal
fashion. Additionally, the district court considered Williams's
response to the defendants' motion for summary judgment when
rendering its decision, although that motion was not properly
before the court because it lacked a proper certificate of service.

Williams next contends that the district court failed to give
him proper notice that it was considering summary dismissal of his
case. His argument is unpersuasive.

Under Rule 56, the district court must give the parties ten
days notice prior to ruling on a motion for summary judgment. Rule
56(c); Washington v. Allstate Ins. Co., 901 F.2d 1281, 1284 (5th
Cir. 1990). Williams received such notice. The defendants filed
their motion for summary judgment on November 5, 1993. Williams
was specifically ordered to respond within ten days and was
notified that if he did "not respond in a timely matter, the Court

[would] grant Defendants' Motion for Summary Judgment." Further,
Williams was granted two extensions of time in which to respond.
When he finally filed a response, it lacked the proper certificate
of service. Thus, the district court returned that pleading to him
with an order that specified the deficiency. Williams failed to
resubmit any response within the approximately two-week period that
elapsed prior to the entry of summary judgment. Furthermore, as
previously mentioned, the district court considered his response in
spite of its deficiencies.

Williams next contends that the district court improperly
granted summary judgment without giving him an opportunity to
conduct adequate discovery. At no point, however, does he assert
what additional discovery would yield or how additional discovery
would enable him to defeat the defendants' motion for summary
judgment. His argument is without merit.

In conclusion, Williams has not shown that summary judgment
was improper. Thus, the judgment of the district court is

A F F I R M E D.[1]

---

[1]Williams has filed a "Motion for Leave to File an Amended
Complaint (Reply Brief)." Tab Z. He seeks additional time to file
a reply brief so that he can add an additional defendant, citing
Fed. R. Civ. P. 15 and 19. Id. It is axiomatic that a party
cannot add a defendant on appeal, and that the Federal Rules of
Civil Procedure do not control. This motion is denied.