

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-41371
Summary Calendar

JIMMY RAY SMITH,

Plaintiff-Appellant,

VERSUS

J. KEVIN O'BRIEN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(93-CV-1106)

(June 19, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Smith appeals the district court's denial of his post-judgment request for an evidentiary hearing in his § 1983 suit. We affirm.

I.

Jimmy Ray Smith, a federal prisoner, filed this in forma pauperis and pro se 42 U.S.C. § 1983 action against the United States Department of Justice ("DOJ"), and two DOJ officials, J. Kevin O'Brien and Richard L. Huff. Smith alleged that the

¹ 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

defendants failed to comply with information requests he filed pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Specifically, Smith requested "a copy of check number 0350 as it appeared when the FBI [c]rime [l]ab received it." This check was evidently used as evidence against Smith in a prior federal criminal proceeding.

The government filed a motion to dismiss Smith's claim for lack of subject matter jurisdiction. The district court denied the motion and ordered the government to comply with Smith's request for a copy of the check. Several months after the district court issued its final judgment, Smith filed a motion with the court requesting an evidentiary hearing on the DOJ's compliance with the court's judgment. Although Smith acknowledged that he received a copy of check number 0350 from the DOJ, he contended that the copy was altered and thus was not an accurate representation of the check as it appeared when the FBI crime lab received it. Smith also requested the court to award him attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E).

In response to Smith's motion, the DOJ filed a Notice of Satisfaction of Judgment, stating that it forwarded to Smith a copy of the check as it appeared when the FBI crime lab received it. The DOJ attached a copy of the check to its response. The district court subsequently denied Smith's request for an evidentiary hearing on the grounds that the agency complied with the court's order to produce the check. The court also denied Smith's request for attorney fees. The court concluded that an evidentiary hearing

was unnecessary to resolve Smith's motions. Smith filed a timely notice of appeal from the court's order denying his motions.

II.

A.

Smith first argues that the district court erred in refusing to hold an evidentiary hearing on whether the DOJ fully complied with the court's order.² According to Smith, the court's denial of his motion for an evidentiary hearing prevented him from proving that the DOJ altered the check. The district court's decision to decide Smith's motions without an evidentiary hearing is reviewed for an abuse of discretion. See In re Corrugated Container Antitrust Litig., 752 F.2d at 142-143. As a general rule, an evidentiary hearing is unnecessary where the district court does not have to resolve complex factual disputes in order to decide the motion. Id.; see also, United States v. MMR Corp., 954 F.2d 1040, 1046 (5th Cir. 1992).

After reviewing record, we are persuaded that the district court did not abuse its discretion in denying Smith's request for an evidentiary hearing. The government's response to Smith's motion included a copy of the check at issue and specifically stated that a copy of that check had been sent to Smith. In

² Smith's request for an evidentiary hearing was filed and ruled upon after the district court issued a final judgment granting Smith relief. As Smith's request for an evidentiary hearing can be construed as a motion to enforce the judgment, the district court had jurisdiction to decide his motion. See Berry v. McLemore, 795 F.2d 452, 455 (5th Cir. 1986); In re Corrugated Container Antitrust Litig., 752 F.2d 137 142-44 (5th Cir.), cert. denied, 473 U.S. 911 (1985).

contrast, Smith's motion fails to explain the grounds for his contention that the copy he received was altered. Smith's motion merely makes the conclusory statement that Smith was "in possession of irrefutable proof that what was sent to [him] . . . [was] not a true copy of what was asked for and was granted." However, Smith offered none of his proof to the district court. Such conclusory assertions are insufficient to create a genuine factual dispute which would require the district court to hold an evidentiary hearing. See Ward v. Whitley, 21 F.3d 1355, 1367 (5th Cir.), cert. denied, ___ U.S. ___, 115 S.Ct. 1257 (1995).

B.

Smith also argues that the district court erred in denying his claim for attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E). Smith's claim for attorney fees must fail. Pro se litigants are not entitled to attorney fees under either the FOIA or the Privacy Act unless the litigant is also an attorney. See Barrett v. Bureau of Customs, 651 F.2d 1087, 1089-1090 (5th Cir.), cert. denied, 455 U.S. 950 (1982); see also McLean v. International Harvester Co., 902 F.2d 372, 374 (5th Cir. 1990). Consequently, the district court did not err in denying Smith's request for attorney fees.

AFFIRMED.