

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50107
Conference Calendar

DERRICK MINAFEE,

Plaintiff-Appellant,

versus

FREDERICK HARRIS, CO., III,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CV-99
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Derrick Minafee argues that the district court erred in granting judgment for the defendants following a bench trial. However, Minafee has failed to provide the court with a transcript of the trial. An appellant, even one pro se, who wishes to challenge findings or conclusions that are based on proceedings at a hearing has the responsibility to order a transcript. Fed. R. App. P. 10(b); Powell v. Estelle, 959 F.2d 22, 26 (5th Cir.), cert. denied, 113 St. Ct. 668 (1992).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Accordingly, this court will not consider the merits of Minafee's challenge to the findings underlying the district court's judgment. Id.

Minafee argues that the district court erred in denying him leave to file an out-of-time motion for summary judgment. The magistrate judge noted in the alternative that Minafee's proposed motion merely reurged his factual allegations. It is clear from the proposed pre-trial order and the district court's findings after trial that there were disputed fact issues. Therefore, even if the motion had been filed, it would have been denied. See Amburgey v. Corhart Refractories Corp., 936 F.2d 805, 809 (5th Cir. 1991) (for moving party to be entitled to a judgment as a matter of law there must be no genuine issue as to any material fact).

Finally, Minafee argues that the district court erred in not granting him a jury trial. Minafee first indicated that he desired a jury trial on the day the non-jury trial commenced, when he objected to the district court's order of a non-jury trial. Even if Minafee's objection is considered a demand for jury trial, it is not timely. Fed. R. Civ. P. 38(d).

AFFIRMED.