

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-50484  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES BRUCE MITCHELL,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-87-CR-67  
- - - - -  
(February 2, 1995)

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

PER CURIAM:\*

James B. Mitchell's motion for leave to proceed in forma pauperis on appeal is hereby DENIED.

The district court considered material outside of the pleadings when denying Mitchell's motion contesting the forfeiture of \$21,000 seized from him. Additionally, the Government moved for dismissal of Mitchell's motion. We review the judgment as a grant of summary judgment. *Washington v. Allstate Insurance Co.*, 901 F.2d 1281, 1283-84 (5th Cir. 1990).

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

This Court reviews a district court's grant of summary judgment *de novo*. *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, 113 S. Ct. 82 (1992). Summary judgment under FED. R. CIV. P. 56(c) is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the moving party meets the initial burden of showing that there is no genuine issue of material fact, the burden shifts to the non-moving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial. *Id.* at 322-24; FED. R. CIV. P. 56(e); *see also Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc).

This Court does not have jurisdiction to review the merits of the administrative forfeiture of Mitchell's property. *Scarabin v. Drug Enforcement Admin.*, 919 F.2d 337, 338 (5th Cir. 1990). This Court does have jurisdiction to determine whether the proper procedural safeguards were followed when Mitchell's property was declared summarily forfeited. *Id.* If it appears that the administrative proceedings were conducted without adequate notice so that the claimant was unable to comply with the statutory provisions for challenging the forfeiture, the claimant can attack the constitutionality of summary forfeiture in federal district court. *Vance*, 676 F.2d at 186-87 (court reached merits of forfeiture where no effort was made by DEA to

inform Vance of administrative forfeiture).

In order to satisfy due process, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Vance*, 676 F.2d at 187 n.6 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 2d 865 (1950)). The *Mullane* standard determines the adequacy of notice given pursuant to 19 U.S.C. § 1607. *Aero-Medical, Inc. v. U.S.*, 23 F.3d 328, 330 (10th Cir. 1994); *U.S. v. Woodall*, 12 F.3d 791, 794 (8th Cir. 1993); *Sarit v. U.S. Drug Enforcement Admin.*, 987 F.2d 10, 13-15 (1st Cir.), *cert. denied*, 114 S. Ct. 241 (1993); *see also Vance*, 676 F.2d at 186-87. "Knowledge of the likely effectiveness of the notice is measured from the moment at which the notice was sent." *Sarit*, 987 F.2d at 14.

The pleadings and evidence in the record indicate that the notice evidently sent to Mitchell's ex-wife's house was reasonably calculated to apprise Mitchell of the forfeiture proceedings. Mitchell's "fugitive declaration" contains the ex-wife's Austin address; an Arkansas address; and the Austin address Mitchell alleges was his correct address. The DEA's investigation report contains only the Arkansas address and the ex-wife's address. In his traverse and in a letter to the DEA that Mitchell included in the record, Mitchell averred that he might have provided his ex-wife's and brother's addresses to his bail bondsman as relatives' addresses where he might be reached. Mitchell's own averments therefore help demonstrate the non-

existence of an issue of material fact. The Government carried its summary judgment burden.

Mitchell did not show that the DEA actually knew that his ex-wife would not convey notice to him. He alleges that the DEA possessed his correct address and that his ex-wife's attempted intervention should have tipped off the agency that she had not notified Mitchell of the forfeiture proceedings. Mitchell's letter to the DEA and his traverse pleading indicate that he had provided the ex-wife's address as a place where he could be reached. Whether he provided that address directly to the DEA or to a bail bondsman is irrelevant -- the agency could reasonably have assumed that Mitchell could be notified at an address at which he averred he could be contacted. The record demonstrates no genuine issue of material fact regarding the notice given by the DEA. Because the appeal is frivolous, it is DISMISSED. See 5TH. CIR. R. 42.2.