UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60175
Summary Calendar

JARVIOUS COTTON, ET AL,

Plaintiffs,

JARVIOUS COTTON,

Plaintiff-Appellant,

VERSUS

SHIRLEY TAYLOR, ET AL,

Defendants-Appellees.

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KENNETH GARRISON,

Plaintiff,

VERSUS

SHIRLEY TAYLOR, ET AL.,

Defendants.

Appeal from the United States District Court
For the Northern District of Mississippi
(92-CV-63 c/w 92-CV-109)

(September 26, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

This is an appeal from a district court's denial of Appellants' motion for a temporary restraining order or preliminary

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

injunction against certain Mississippi prison officials.[1] In that the record is insufficient to show that failure to grant injunctive relief would result in irreparable injury, we affirm the decision of the trial court.

Jarvious Cotton and several other prisoners of the Mississippi Department of Corrections at Parchman, Mississippi, filed this action seeking equitable and monetary relief under 42 U.S.C. § 1983, alleging violations of their constitutional rights under the First Amendment due to the prison's inspection policy regarding outgoing legal mail, and under the Eighth Amendment due to flooded housing conditions.[2] The plaintiffs filed a motion for a temporary restraining order or preliminary injunction to enjoin the defendants from continuing to enforce the outgoing legal mail policy.

At the hearing before the district court it was stipulated that the policy being challenged involved a visual inspection of outgoing legal mail for contraband before it could be mailed. The prisoner is required to remove his mail from the envelope, shake it in the presence of the prison personnel for them to determine that it does not contain contraband, and replace the mail in the envelope. The mail is not read by prison personnel.

The district court held that the plaintiffs had failed to show that they were likely to prevail on the merits. Citing Henthorn v. Swinson, 955 F.2d 351, 353 (5th Cir.), cert. denied, 112 S. Ct. 2974 (1992).[3]

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[1] Appellate jurisdiction is based on 28 U.S.C. § 1292(a)(1) for denial of injunctive relief.

[2] The flooding condition is not part of this appeal. See Appellants' brief, 5 n.3.

[3] Swinson concerned a Bureau of Prison policy requiring the opening of incoming special mail in the presence of the inmate to check for contraband. In the instant case, the district court held

To obtain a preliminary injunction, appellants must establish the following four factors: 1) a substantial likelihood of success on the merits; 2) a substantial threat that failure to grant the injunction will result in irreparable injury; 3) the threatened injury outweighs any damage that the injunction may cause the opposing party; and 4) the injunction will not disserve the public interest. Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991). This Court reviews a district court's denial of a preliminary injunction for abuse of discretion. Id.

The denial of the motion for preliminary injunction can be affirmed on an alternative basis. See Riley v. Commissioner, 311 U.S. 55, 59, 61 S.Ct. 95, 97, 85 L.Ed. 36 (1940). Cotton alleged at the hearing that the injury caused by the policy is that it takes more time "to mail your mail" and has caused him personally to "slack up from writing." This allegation of injury is insufficient to show that failure to grant the injunction would result in irreparable injury.

Accordingly, the trial court did not err in denying the motion for injunctive relief and we AFFIRM the decision of the district court.

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that there was no meaningful difference between that policy and the policy challenged here. This court has recognized a distinction between incoming and outgoing mail. Brewer v. Wilkerson, 3 F.3rd 816, 825 (5th Cir. 1993) cert. denied 114 S.Ct. 1081 (1994). Because our disposition of this appeal is made on alternate grounds, we do not address how the distinction would apply to the challenged policy in this case.