

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60540
Summary Calendar

LEROY CAMPBELL,

Plaintiff-Appellant,

versus

LARRY JONES, Bondsman, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the
Southern District of Mississippi
(3:92 CV 760 (B)(S))

(February 10, 1995)

Before JOHNSON, JONES, and EMILIO M. GARZA, Circuit Judges.

JOHNSON, Circuit Judge:¹

Plaintiff-Appellant Leroy Campbell ("Campbell") appeals the district court's decision granting summary judgment to the defendants in this wrongful relinquishment action. Because we agree with the district court that there is no genuine issue as to any material fact in this case, we affirm the summary judgment.

I. Facts and Procedural History

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 Pursuant to this Rule, the Court has determined that this opinion should not be published.

Proceeding pro se and in forma pauperis, Campbell brought this suit against: bail bondsman Larry Jones ("Jones"); Jones' former bonding company, A-AACE Bail Bond Co.; Indiana Lumbermens Mutual Insurance Company; and Underwriters Surety, Inc.² Campbell alleged that on February 13, 1988, he obtained an appearance bond for \$25,000 from Jones as a representative of A-AACE Bonding Company in order to secure Campbell's release from Rankin County jail in Mississippi. On June 15, 1988, Jones arrested Campbell at Campbell's workplace in Gulfport, Mississippi and then relinquished custody of Campbell to the Rankin County Sheriff's Department. Campbell claims that Jones' relinquishment was improper and has brought suit under a wide variety of grounds pursuant to that alleged wrongful relinquishment.

Both Jones³ and the Underwriters moved for summary judgment, contending that the evidence showed the relinquishment was, in fact, lawful. The district court agreed and granted summary judgment for the defendants.

The district court found the following facts to be undisputed. On November 3, 1987, Campbell was arrested for embezzlement pursuant to a bench warrant of the Rankin County Municipal Court. On February 13, 1988, Campbell purchased a \$25,000 bail bond from Jones of A-AACE Bail Bond Company on which Campbell was the

²Indiana Lumbermens Mutual Insurance Co. and Underwriters Surety, Inc. are sureties on the bond issued by Jones. For purposes of ease and clarity, these companies will be referred to as "the Underwriters" throughout this opinion.

³Jones' bail bonding company has been out of business for several years.

principal and the Underwriters were sureties. On June 15, 1988, Jones went to Gulfport, Mississippi and transported Campbell to Rankin County where Jones relinquished Campbell to the sheriff's department.⁴

Based upon these undisputed facts, the district court relied upon state law and the bond terms to conclude that the surrender was lawful. Thus, the district court dismissed the suit with prejudice and denied all pending motions as moot. Campbell now appeals.

II. Discussion

This court reviews a grant of summary judgment de novo by evaluating the district court's decision with the same standards that guided the district court. *Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). We review the evidence and inferences in the light most favorable to the non-movant. *McGregor v. Louisiana State University Board of Supervisors*, 3 F.3d 850, 855 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1103 (1994). We will affirm the grant of summary judgment if there exists no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.*

The initial summary judgment burden resides with the moving party to demonstrate the absence of genuine issue of material fact, but the movant need not negate the elements of the non-movant's case. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.

⁴The parties dispute why Jones detained Campbell and whether such detention was warranted. However, as demonstrated, *infra*, these facts are immaterial to the summary judgment motion.

1994) (en banc) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If this burden is met, the burden shifts onto the non-movant to "go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial." *Id.*

Under Mississippi law, a bail bondsman "may, at any time before final judgment, surrender [the] principal, in vacation to the sheriff, . . . in discharge of their liability. . . . [A bail bondsman] may arrest [the] principal anywhere or authorize another to do so." MISS. CODE ANN. § 99-5-27 (West 1994) (source notes following the statute indicate no change to the statute since 1942).

Under the terms and conditions of the application for the actual appearance bond, the surety had "the right to apprehend, arrest and surrender the Defendant to the proper officials at any time provided by law." See Record at 2, 320.

The principle issue in this case is whether bail bondsman Jones had an unqualified right to relinquish Campbell to government officials and, thereby, discharge his duty under the terms of the bond.⁵ Under the common and statutory law of Mississippi, as well

⁵Campbell argues for the first time on appeal that the application for the appearance bond is an invalid and unenforceable contract. He also argues for the first time that the bail bond agreement between Jones and the Underwriters limits Jones' agency authority so as to preclude Jones' actions in this case. Because these arguments should have been raised and factually developed in the district court, this Court refuses to review these issues at this time. *Cf. Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991).

as the terms of the bond application itself,⁶ Jones had the right to relinquish his charge to Mississippi officials at any time. The Mississippi bond relinquishment statute makes clear that the bondsman is fully discharged of his duties when the defendant is relinquished.

Campbell's arguments against the propriety of summary judgment do not have any effect on the material issue in the case—whether under Mississippi law the bondsman can properly relinquish a defendant to the sheriff at any time, for any reason. Under Mississippi law, the motivation of the bondsman leading to the surrender of the defendant is wholly irrelevant to whether the relinquishment is proper. The bondsman has full discretion to relinquish the defendant for any reason whatsoever, so long as that relinquishment occurs prior to the time of trial.⁷ In the case at bar, Jones was simply exercising this very broad discretion. Thus, the district court's summary judgment should be affirmed.⁸

⁶While providing the bail bondsman with the unqualified right to relinquish a defendant to the authorities, the application for bond also provides that in certain instances Campbell could receive a refund of his premium in the event of early surrender. While Jones and Campbell dispute the motivation of Jones' arrest and surrender, Mississippi law renders the motivation irrelevant to Campbell's wrongful surrender claim given the absolute right of surrender held by a bail bondsman. It is possible that Campbell may have a breach of contract claim for breach of the bond application in which his damages would consist of a return of the bond premium. However, this Court is not in a position to address any such breach of contract claim at this time since Campbell has never raised such a claim nor sought refund of the bond premium.

⁷The parties to this case do not dispute that Jones relinquished Campbell prior to the trial date.

⁸Campbell argues that the failure of the defendants to comply with discovery orders and the failure of the court to provide

III. Conclusion

Mississippi law allows a bail bondsman to relinquish a defendant at any time to state officials and, thereby, discharge the bondsman's duty under a bond agreement. Therefore, the district court correctly granted summary judgment in favor of bail bondsman Jones.

AFFIRMED.

additional time for further discovery are also grounds of error. However all that Campbell sought to obtain through the additional discovery was evidence with which he could impeach Jones' proffered reason for surrendering Campbell to the Rankin County authorities. Since these discovery issues are not germane to the material issue of whether Jones lawfully surrender Campbell, the discovery issues do not impact the summary judgment analysis.