

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60645
Conference Calendar

ARTHUR NICKENS ET AL.,
Plaintiffs,
ARTHUR NICKENS and
CURTIS ANTONIO WAY,
Plaintiffs-Appellants,
versus
WALTER GEE ET AL.,
Defendants,
WALTER GEE ET AL.,
Defendants-Appellees.

ARTHUR NICKENS,
Plaintiff-Appellant,
versus
WALTER GEE,
Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Mississippi
USDC Nos. 4:91CV315-0, 4:93CV301
- - - - -

March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

An appellant, even one pro se, who wishes to challenge

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

findings or conclusions that are based on testimony 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 S. Ct. 668 (1992). This Court does not consider the merits of such a challenge when the appellant fails in that responsibility. Powell, 959 F.2d at 26; see also Richardson v. Henry, 902 F.2d 414, 416 (5th Cir.), cert. denied, 498 U.S. 901 (1990). "The failure of an appellant to provide a transcript is a proper ground for dismissal of the appeal." Richardson, 902 F.2d at 416.

In the instant appeal, the only portion of the trial that is transcribed is the magistrate judge's oral findings and conclusions. We do not have before us a record of the evidence adduced at trial. Because the appellants have failed to provide a transcript of that evidence as required by Fed. R. App. P. 10(b), we cannot review the award of damages. See Nichols v. Petroleum Helicopters, Inc., 17 F.3d 119, 121 (5th Cir. 1994). As we cannot review the only issue raised, we must dismiss the appeal. See Richardson, 902 F.2d at 416.

APPEAL DISMISSED.