

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60838
Summary Calendar

MELVIN R. BUCKLEY,

Plaintiff-Appellant,

versus

THE NATCHEZ-ADAMS SCHOOL
DISTRICT, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the
Southern District of Mississippi
(5:94-CV030BrN)

(September 26, 1995)

Before JOHNSON, HIGGINBOTHAM, and SMITH, Circuit Judges.

JOHNSON, Circuit Judge:¹

Melvin R. Buckley ("Buckley") appeals the district court's granting of summary judgment against him in his 42 U.S.C. § 1983 civil rights actions. Because we agree with the actions of the district court, we affirm.

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 Pursuant to this Rule, the Court has determined that this opinion should not be published.

Buckley filed a civil rights action against the Natchez-Adams School District, seven individual board members on the school district's Board of Trustees, and the current Superintendent of Education for the school district (collectively referred to as the "District") under 42 U.S.C. § 1983. Buckley alleged that in 1988, he entered into a three-year employment contract with the defendants employing him as the superintendent of the Natchez-Adams School District. The contract was renewed by the Board of Trustees in 1990. In October 1992, Buckley received a notice that his contract would not be renewed for the 1993-94 school year. Buckley requested a hearing to contest the grounds for the non-renewal, and the hearing was scheduled for February of 1993.² Prior to the scheduled hearing, the parties entered into a settlement agreement. Under the agreement, Buckley agreed to forego his right to a hearing before the Board of Trustees in exchange for a two-year contract of employment with the district. The compromise contract allowed Buckley to serve in a position other than superintendent so that he could attain the requisite number of years which would entitle him to retirement benefits. Buckley claims that the two-year contract tendered to him by the Board of Trustees pursuant to the settlement agreement was not in accord with the agreement and, was, therefore, unacceptable. Consequently, Buckley refused to sign the tendered contract and then made some proposed changes which he submitted to the Board of Trustees. Buckley subsequently

²Mississippi state law provides that all superintendent whose contracts are not renewed may request a hearing of right before the Board of Trustees of the school district.

received the same employment contract from the school district as had originally been tendered to him. Because the unagreeable terms were still present and the changes had not been made, Buckley again refused to sign. Thus, the parties never entered into the two-year employment contract contemplated by the settlement agreement.

In March of 1994, Buckley filed this civil lawsuit under 42 U.S.C. § 1983, contending that the school district breached the settlement agreement by failing to present the proposed employment contract to the Board of Trustees. He argues that this breach deprived him of his property interest in continued employment with the school district. Buckley also alleges that the defendants fraudulently induced him to enter into the settlement agreement without any intention of performing under the agreement.

On June 3, 1994, the District filed a motion for summary judgment, arguing that Buckley could not establish that he had been deprived of any constitutionally-protected property interest. On June 16, 1994, Buckley filed a "Motion to hold defendants' motion for summary judgment and to dismiss in abeyance; for extension of time to respond; and for other relief." A case management conference was held on July 6, 1994, after which the district court entered an order directing the parties to complete all discovery on or before December 5, 1994. On July 28, 1994, Buckley filed a "Motion to hold in abeyance defendants' motion for summary judgment and to dismiss; and to allow discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure." On September 19, 1994, the district court denied Buckley's motions to hold in abeyance, noting

that the defendant's summary judgment motion had been filed on June 3, 1994, and that Buckley had thus effectively received a two-month extension of time to respond to the motion.³ The court ordered Buckley to respond to the defendants' motion for summary judgment by October 10, 1994.

Buckley filed a response to the defendants' motion for summary judgment on October 11, 1994, arguing that genuine issues of material fact existed that precluded summary judgment. On November 9, 1994, the district court granted the defendants' motion for summary judgment, dismissing Buckley's federal claims with prejudice and dismissing his state claims without prejudice. The district court determined that Buckley had waived his right to procedural due process through his acceptance of the settlement agreement and that he had not been fraudulently induced to waive his procedural rights. Buckley filed a timely notice of appeal from the court's judgment.

II. Discussion

This Court reviews the grant of summary judgment by the

³In addition to appealing the granting of the summary judgment, Buckley also appeals the district court's denial of motion for additional time for discovery and for response to the defendant's motion for summary judgment made pursuant to FED. R. Civ. P. 56(f). This Court reviews a district court's decision to preclude further discovery for an abuse of discretion. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 28 F.3d 1388, 1395-96 (5th Cir. 1994). A nonmoving party may not simply rely on a vague assertion that additional discovery is necessary, but must demonstrate that further discovery would be more than a mere fishing expedition. *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1443 (5th Cir. 1993). Because Buckley has failed to demonstrate how further discovery would enable him to oppose summary judgment, the district court did not abuse its discretion by denying his Rule 56(f) motion for additional time.

district court under a de novo standard. *Weyant v. Acceptance Insurance Co.*, 917 F.2d 209, 212 (5th Cir. 1990). Summary judgment is appropriate when, considering all of the allegations in the pleadings, depositions, admissions, answers to interrogatories, and affidavits, and drawing all inferences in the light most favorable to the nonmoving party, there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. *Newell v. Oxford Management, Inc.*, 912 F.2d 793, 795 (5th Cir. 1990). If the moving party meets the initial burden of showing that there is no genuine issue, the burden shifts to the nonmoving party to produce evidence or set forth specific facts showing the existence of a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

The due process clause of the United States Constitution requires "some kind of hearing" before a protected property interest has been denied. *Rathjen v. Litchfield*, 878 F.2d 836, 838 (5th Cir. 1989). However, a party may waive his or her normal rights to procedural due process in the form of a settlement agreement. See, i.e., *id.* at 838-41. Once such a party waives those procedural due process rights under such a settlement agreement, the parties' remedies then become the procedures under state law available for enforcing the settlement agreement. See *id.*

For example, in *Rathjen*, a jury found that the City of Houston had made promises to Dr. Rathjen with the intent of breaching those promises in order to induce Dr. Rathjen to forego a fair hearing

over her demotion. *Id.* at 847-38. By entering into the settlement agreement, this Court said that Dr. Rathjen had agreed to forebear pursuing a grievance hearing through the City. *Id.* at 839. This Court determined that "technically Dr. Rathjen's right to insist upon a hearing before demotion was thwarted when her voluntary demotion was procured by fraud," but that this judgment of fraud was rendered purely in hindsight since, if the City had carried through with its promises, the settlement agreement would have been satisfactory to Rathjen. *Id.* The Court refused to apply hindsight in finding fraud in such a settlement agreement grounds for a procedural due process violation because the Court did not want to discourage compromise of public employer-employee disputes by suggesting that whenever such a dispute was resolved informally in order to forestall formal hearing procedures, the failure of this process to satisfy the employee would automatically threaten a procedural due process violation. *Id.* Thus, in the case of a breached settlement agreement under which normal procedural due process mechanisms were foregone, the new consideration became that acts that followed the parties' agreement and the procedural remedies that were then available. *Id.*

Thus, the relevant procedural analysis becomes the adequacy of the state law procedures for responding to a breach of the settlement agreement. Buckley could have pursued a grievance against the District for its alleged breach of the settlement agreement by using state procedures available to him. However, he did not choose to do so. State contract law is much more suited to

resolving disputes of this nature than is federal civil rights legislations.

Because there were state procedures available to Buckley to enforce the settlement agreement which he did not use, his procedural due process rights have not been violated. Therefore, the district court did not err by granting the District's motion for summary judgment.

III. Conclusion

Buckley has not established any genuine issue as to a material fact regarding the alleged violation of his procedural due process rights by the District. Therefore, the district court was correct in granting summary judgment in the District's favor.

AFFIRMED.