

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50822
Summary Calendar

GEORGE E. BIRDWELL,

Plaintiff-Appellant,

versus

M. B. THALER, Warden,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-95-CA-673
- - - - -

August 29, 1997

Before KING, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:*

George E. Birdwell, a Texas prisoner (# 420325), appeals the magistrate judge's grant of summary judgment for defendant Thaler in his pro se civil rights action. Birdwell argues that the magistrate judge abused his discretion in failing to appoint him an attorney to file a response to Thaler's summary-judgment motion. The magistrate judge did not abuse his discretion because Birdwell did not show that "exceptional circumstances"

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

existed to warrant the appointment of counsel. See Ulmer v. Chancellor, 691 F.2d 209, 212-13 (5th Cir. 1982).

Birdwell vaguely contends that genuine issues of material fact existed as to his claim that Warden Thaler ordered corrections officials to remove him from a private hospital and returned him to the prison without obtaining his medical records. Birdwell has failed to demonstrate that such action constituted deliberate indifference to his serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). He has abandoned his remaining substantive claims by failing to brief them on appeal. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); Fed. R. App. P. 28(a)(4).

Birdwell's motion for "default judgment" or to otherwise penalize appellee's counsel for failing to file a timely brief is DENIED.

AFFIRMED.