

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-30614  
Conference Calendar

---

TOBY IHLI,

Plaintiff-Appellant,

versus

WAYNE MCELVEEN ET AL.,

Defendants,

RANDY BENEVAGE; RON JOHNSON,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 96-CV-2367  
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Toby Ihli appeals summary judgment for defendants Randy Benevage and Ron Johnson. He argues that judgment in their favor on the 42 U.S.C. § 1985 claim was in error because they failed to meet their initial summary-judgment burden by pointing out an absence of a genuine issue on a material fact concerning that claim and the district court improperly met the burden required

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of the moving party. Even if Benevage and Johnson failed to meet their summary-judgment burden, the district court's judgment was correct because Ihli's allegation, raised for the first time on appeal, of animus motivating the defendants's action, to discriminate against Ihli because he is a mental-health-care patient, is insufficient to state a § 1985(3) claim. See Word of Faith World Outreach Ctr. Church v. Sawyer, 90 F.3d 118, 124 (5th Cir. 1996), cert. denied, 117 S. Ct. 1248 (1997).

We have independently reviewed the remaining arguments and the appellate record. We conclude that the district court did not err in granting summary judgment to Benevage and Johnson. See Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

AFFIRMED.