IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10762
Summary Calendar

ROY LEE SMITH,

Plaintiff-Appellant,

versus

VANESSA R. SMITH;
JEROME THOMAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-2410-G

March 24, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

Roy Lee Smith appeals the district court's grant of the appellees' motion for summary judgment in this 42 U.S.C. § 1983 case. He argues that the district court erred in granting their motion. The district court did not so err. The appellees' summary judgment evidence showed that they exercised reasonable professional judgment in obtaining the warrant for appellant Smith's arrest, and Smith's summary judgment evidence was insufficient to rebut this showing. See Little v. Liquid Air

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Corp., Inc., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); Malley v. Briggs, 475 U.S. 335, 345-46 (1986). The appellees' summary judgment evidence also showed that they did not act with malice in initiating the investigation of appellant Smith, and Smith likewise did not rebut this showing. See Kerr v. Lyford, 171 F.3d 330, 340 (5th Cir. 1999). The district court thus did not err in granting summary judgment to the appellees on appellant Smith's federal law claims.

The district court also did not err in granting summary judgment to the appellees on appellant Smith's state law claims, as he was arrested pursuant to a valid warrant and the appellees did not act with malice in initiating the investigation against him. See Cantu v. Botello, 910 S.W.2d 65, 66 (Tex. App. 1995); Thrift v. Hubbard, 974 S.W.2d 70, 77 (Tex. App. 1998). Finally, the district court did not abuse its discretion when handling appellant Smith's Rule 56 motion for continuance and request for discovery, as Smith failed to show how additional discovery would create a genuine issue of material fact. See Richardson v. Henry, 902 F.2d 414, 417 (5th Cir. 1990); International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1266 (5th Cir. 1991). Accordingly, the judgment of the district court is AFFIRMED.