

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 92-1411
Summary Calendar

RONALD WILSON,

Plaintiff-Appellant,

VERSUS

JERRY NEAL, Chief of Police,
Amarillo Police Department,
Amarillo, Texas,

Defendant-Appellee.

No. 92-1412

RONALD D. WILSON,

Plaintiff-Appellant,

VERSUS

JOE MORRIS, ET AL.,

Defendants-Appellees.

No. 92-1414

RONALD D. WILSON,

Plaintiff-Appellant,

VERSUS

POTTER COUNTY, TX, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court
For the Northern District of Texas

(CA 2 90 26, CA 2 90 39 & CA 2 90 203)

April 20, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Ronald D. Wilson, plaintiff, was a prisoner in the Potter County Correctional Center in Amarillo, Texas. Wilson filed three complaints pursuant to 42 U.S.C. § 1983. The first, the subject of appeal No. 92-1411, was filed against Jerry Neal, the chief of the Amarillo Police Department. The subject of the complaint is alleged harassment and false arrest resulting from a homosexual encounter between Wilson and Detective Ron Clemmons. The second, the subject of appeal No. 92-1412, was filed against three correctional officers. In this suit, Wilson makes various allegations of harassment and use of excessive force by prison officials and other inmates. The third, the subject of appeal No. 92-1414, was filed against Potter County and Deputy Sheriff Calvin Stalter. In this suit, Wilson alleged that prison officials were tampering with his mail.

On October 29, 1990, the magistrate judge held a Spears hearing with respect to all three suits. At the hearing, Wilson

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

refused to make any statements until he was represented by counsel. At this point, the magistrate judge made the following statement:

The result of your failing to give the Court any information to allow the Court to either order additional process based upon these two other suits that you have pending, to allow the Court to narrow the issues that are presently pending before the Court, to give the Court any information concerning whether you should be allowed to continue to proceed in forma pauperis [or] whether you should have to pay court costs[,] filing fees, based upon your employment now, the failure to just flat out refuse to give any information (sic) is going to leave me no alternative but to recommend to the district judge that all your cases be dismissed.

The magistrate judge went on to explain to Wilson that he could invoke his rights under the Fifth Amendment if any of his statements would tend to incriminate him, but that to invoke the privilege in a general manner would result in dismissal of the case. The magistrate judge asked Wilson if he understood and Wilson answered affirmatively. The magistrate judge then asked Wilson "[d]o you still wish not to make any statement concerning these cases whatsoever?" Wilson responded, "[y]es, sir, I do. Like I said, I will not state anything until I am represented by counsel and any motion that you deny we'll take it to Appellate's [sic] Court."

At this point, the magistrate judge allowed respondents to put on evidence and then returned to addressing Mr. Wilson. The magistrate judge asked Wilson to explain why he needed a lawyer in this case. Wilson stated that he would feel more comfortable with an attorney, but refused to provide the magistrate judge with any

information to support this request. The magistrate judge again informed Wilson that this refusal to provide information relating to his individual claims and his motion for appointment of counsel would result in a recommendation that the cases be dismissed.

The magistrate judge's report and recommendation did recommend dismissal with prejudice for Wilson's refusal to cooperate in the Spears hearing. The district court adopted this recommendation in all three suits.

Although neither the magistrate judge nor the district court specifically cited to Fed. R. Civ. P. 41(b), the dismissal with prejudice of all of Wilson's suits was the result of Wilson's failure to comply with the court's rules. Rule 41(b) dismissals are reviewed for abuse of discretion. Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1191 (5th Cir. 1992). This Court will find an abuse of discretion unless "there is a clear record of delay or contumacious conduct by the plaintiff, and ... the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile." Id. (footnote omitted).

Wilson repeatedly refused to cooperate with the magistrate judge's attempts to have him state the facts of his case in order to avoid dismissal. Wilson completely disregarded several admonishments by the magistrate judge and even refused to provide any information to support his request for appointment of counsel. Wilson displayed utter contempt for the magistrate judge by stating

that he would simply appeal any unfavorable decisions on his motions. The record is clear that Wilson's behavior was contumacious.

In recommending dismissal with prejudice, the magistrate judge presented an alternate recommendation to the district court. This included revoking Wilson's *informa pauperis* (IFP) status, requiring him to pay filing fees on each suit, and assessing \$500 in attorney's fees against him. When presented with this lesser option, the district court chose to accept the recommendation of the magistrate judge that Wilson's suits be dismissed with prejudice. This is tantamount to an express determination that the lesser sanctions contained in the alternative recommendation would not be adequate. As a result, we find that the district court did not abuse its discretion in dismissing with prejudice Wilson's three § 1983 actions; and those dismissals are now affirmed.