

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2100

Summary Calendar

BILLY HOLMES,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-88-2539)

October 1, 1993

Before HIGGINBOTHAM, DUHÉ and BARKSDALE, Circuit Judges.

PER CURIAM:*

Billy Holmes, an inmate of the Texas Department of Criminal Justice, appeals an adverse summary judgment dismissing his civil rights complaint. In an earlier proceeding, Holmes appealed from another district court order granting summary judgment for the defendants. On appeal, this court held that Holmes had not received proper notice of the district court's intent to rule on summary judgment as required by Federal Rule of Civil Procedure 56,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and remanded to the district court for further proceedings. The district court gave Holmes notice of its intention to rule again on summary judgment and then dismissed his suit. Holmes appeals. We AFFIRM.

I.

Holmes' action concerns 17 disciplinary proceedings for charges including use or possession of intoxicating inhalants, failure to obey orders, creating a disturbance, and refusal to work. Holmes claims: (1) he regularly was held in prehearing detention in violation of prison rules and without exigent circumstances; (2) the disciplinary proceedings failed to satisfy due process; and (3) the disciplinary charges and resulting punishments were rendered in retaliation for his exercise of his right of access to the courts. After we remanded this case to the district court, Holmes filed both a motion to compel discovery of various documents in the defendants' possession and a motion for a continuance to pursue discovery. The district court denied these motions, finding that Holmes had not shown the relevance of the requested discovery. As Holmes had failed to place in contention any genuine issues of material fact, the court dismissed his case.

II.

Holmes raises three issues on appeal. First, he claims that the district court abused its discretion in denying him the opportunity to conduct discovery. Second, he asserts that the court erred in granting the defendants summary judgment. Finally, he argues that the court deprived him of adequate appellate review

by failing to include the transcript of his Spears hearing as part of the record, by failing to provide him a transcript of his Spears hearing, and by denying his motion to correct the record. We consider each of these issues in turn.

A.

The district court construed Holmes' request for a continuance as a motion filed pursuant to Federal Rule of Civil Procedure 56(f). Rule 56(f) allows a plaintiff to request a continuance to conduct discovery if necessary to withstand a motion for summary judgment. The plaintiff is not automatically entitled to a continuance, however, but rather must specify the factual allegations which discovery will assist him in proving. Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990). If the record indicates either that discovery will not enable the plaintiff to defeat summary judgment or that the plaintiff is employing discovery to harass the defendant, to discover information about a claim of which he is unaware, or to delay the proceedings, the court should deny the plaintiff's motion. Mills v. Damson Oil Corp., 931 F.2d 346, 35-51 (5th Cir. 1991). We review the district court's denial of plaintiff's 56(f) motion for abuse of discretion. Washington, 901 F.2d at 1285-86.

Although plaintiff pursues a litany of allegations against prison officials, he does not explain how his discovery requests will substantiate these claims. Moreover, as the district court noted, some of the documents that he requests are in prison facilities to which he has access, others the defendants made

available to him when they served him with their motions, and the remainder are irrelevant to his assertions. Holmes appears to be making these requests either to vex prison officials or to obtain incriminating information as of yet unknown to him. As neither of these purposes falls within the ambit of Rule 56(f), the district court did not commit reversible error in denying Holmes a continued opportunity to conduct discovery.

B.

Holmes asserts that the trial court erred in granting the defendants summary judgment because he placed in contention several genuine issues of material fact. These facts pertain to allegedly illegitimate prison disciplinary proceedings. Holmes contends that prison officials detained him improperly prior to several disciplinary hearings, that officials denied him due process during the hearings, and that officials initiated these hearings in retaliation for exercising his right to access to the courts.

This court reviews the record de novo on appeal from summary judgment. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 113 S.Ct. 82 (1992). To win summary judgment, the defendants must demonstrate based on the record that the Holmes has raised no genuine issue of material fact. Id. The district court correctly concluded that the defendants carried this burden.

The district court had a sound basis for concluding that the prison officials did not detain defendant prior to his hearings for an unconstitutional length of time. Prison officials may detain an inmate before a hearing to prevent escape, to protect other inmates

or prison staff, or to maintain the integrity of an investigation. Hewitt v. Helms, 459 U.S. 460, 476 (1983). Each case in which prison officials detained Holmes fell within one of these three categories. Holmes either stood accused of potentially dangerous activities--striking or threatening an officer, creating a disturbance or refusing to obey orders--or refused to disclose evidence of his wrongdoing to prison officials. Moreover, whenever prison officials detained him for longer than 72 hours, the officials set forth in the record a legitimate reason for their actions.

Similarly, the district court had good reason to find that the hearings about which Holmes complains met the standards of due process. Most of the disciplinary hearings involved minor offenses which were not punishable by solitary confinement or loss of good time credit. As a result, the prison officials had to provide Holmes notice of the hearings and an opportunity to respond to the charges in person or in writing. Id. The record indicates that prison officials properly notified Holmes of his hearings. They also allowed him to attend the hearings to defend himself, although Holmes at times declined to do so. As to the two offenses involving more significant punishment, Holmes was entitled to call witnesses. Wolff v. McDonnell, 418 U.S. 539, 566 (1974). Holmes claims that he was denied this right. The record indicates, however, that in one case he failed to give prison officials advance warning of his desire to call witnesses and that in the

other the witnesses refused to testify. Neither event constitutes a violation of his constitutional rights.

Finally, Holmes alleges that prison officials initiated disciplinary hearings to punish him for exercising his right to access to the courts. His allegations in his pleadings provide the only basis for this claim. By themselves, they are insufficient to defeat summary judgment. Topalian, 954 F.2d at 1131.

C.

Holmes also alleges that the district court erred by failing to include the transcript as part of the record, by failing to provide him a transcript of his Spears hearing, and by denying his motion to correct the record to indicate accurately the contents of the Spears hearing.

Holmes is incorrect in his allegation that a transcript of the Spears hearing is not a part of the record on appeal.

As to the district court's refusal to provide Holmes with the transcript of the Spears hearing, that decision did not prevent him from contesting the conclusions the district court drew from the hearing. Moreover, Holmes is entitled to a transcript only if his appeal presents a substantial question. See Oliver v. Collins, 904 F.2d 278, 281 (5th Cir. 1990). Holmes' appeal does not.

Review of the transcript indicates that the trial court characterized Holmes' statements at the Spears hearing correctly in all but one instance. The district court erred only in claiming that Holmes acknowledged that he had access to the goods provided by the commissary. Holmes is correct in asserting that he did not

make this statement. The claim is irrelevant to Holmes' appeal, however. No special procedural requirements attach to a disciplinary hearing that results in the revocation of commissary privileges. Thus, this error has no bearing on the merits of Holmes' case. A transcript of the Spears hearing would not have enabled Holmes to raise a substantial question on appeal and the record accurately reflects the contents of the Spears hearing on all relevant matters.

Conclusion

Holmes asserts that the district court committed reversible error in granting the defendants summary judgment. He offers no evidence, however, to support his various claims. Neither does he offer any reason to believe that access to further documents in the defendants' possession or to a transcript of the Spears hearing would enable him to substantiate his claims. As defendant raises no genuine issue of material fact, we AFFIRM.