

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Weaver v. Evans

713 F. App'x 337 (5th Cir. 2018) · Decided February 22, 2018

SUMMARY

Octavious Weaver appealed a jury verdict finding that prison officials Roderick Evans and Loretta Adams did not use excessive force against him. The Fifth Circuit held that it lacked jurisdiction to review the district court's summary-judgment ruling as to other defendants because Weaver's notice and brief did not clearly appeal that ruling. The court declined to review the sufficiency of the jury verdict because Weaver failed to provide the trial transcript and affirmed the district court's judgment.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Haynes, J.; Jolly, J.; Owen, J.
JURISDICTION	Federal
DECIDED	February 22, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Weaver appealed after a jury returned a verdict for Evans and Adams in his 42 U.S.C. § 1983 excessive-force action. He also appeared to challenge summary judgment entered for three other defendants.
STANDARD OF REVIEW	The court could not review the sufficiency of the jury verdict without the trial transcript. It also applied jurisdictional and appellate-preservation principles to determine the scope of the appeal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Octavious Weaver v. Roderick Evans, Loretta Adams

TOPICS

- appellate jurisdiction
- appellate procedure
- preservation of error
- section 1983
- civil rights

PRACTICE AREAS

- civil rights
- appellate procedure
- prisoner litigation

QUESTIONS PRESENTED

1. Whether the Fifth Circuit had jurisdiction to review summary judgment entered for defendants whose claims and dismissal were not identified in Weaver's notice of appeal or appellate brief.
2. Whether the court could review the sufficiency of the jury verdict when Weaver failed to provide the trial transcript required by the Federal Rules of Appellate Procedure.

HOLDINGS

1. The court lacked jurisdiction to address any appeal from the district court's grant of summary judgment because Weaver's notice of appeal and brief did not clearly identify or address the three defendants whose claims were dismissed by summary judgment.
2. The court declined to review the jury's verdict because Weaver failed to provide the trial transcript required for appellate review.

KEY QUOTATIONS

“We cannot review the jury’s verdict without the trial transcript.” (713 F. App'x at 338)

FACTUAL BACKGROUND

Weaver, a Mississippi prisoner, brought a 42 U.S.C. § 1983 action alleging that Roderick Evans used excessive force against him and that Luretta Adams failed to intervene. His claims against Evans and Adams proceeded to a jury trial, where the jury found in their favor. Claims against three other defendants were resolved by summary judgment, but Weaver's notice of appeal and brief focused on the jury verdict and did not identify those defendants or challenge the summary-judgment ruling as to them.

PROCEDURAL HISTORY

The district court denied summary judgment to Evans and Adams, allowing Weaver's claims against them to proceed to trial. The jury found that Evans and Adams had not used excessive force. The district court separately granted summary judgment for three other defendants. On appeal, Weaver challenged the jury verdict and confusingly asserted that summary judgment had also been granted for Evans and Adams. The Fifth Circuit held that it lacked jurisdiction to review the summary-judgment ruling as to the other defendants and declined to review the jury verdict because Weaver failed to provide the trial transcript.

DISPOSITION

affirmed

CASES CITED

- C.A. May Marnie Supply Co. v. Brunswick Corp., 649 F.2d 1049, 1056 (5th Cir. 1981) (per curiam)
- Pope v. MCI Telecomms. Corp., 937 F.2d 258, 266 (5th Cir. 1991)
- Powell v. Estelle, 959 F.2d 22, 26 (5th Cir. 1992) (per curiam)
- Diaz v. Collins, 114 F.3d 69 (5th Cir. 1997)
- RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1289 (5th Cir. 1995)

- *Richardson v. Henry*, 902 F.2d 414, 415-16 (5th Cir. 1990)
- *In re Ritz*, 832 F.3d 560 (5th Cir. 2016)

OPINION

PER CURIAM.

PER CURIAM: * Octzavius Weaver, Mississippi prisoner # 85950, appeals the jury verdict in his 42 U.S.C. § 1983 action, in which the jury found that Roderick Evans and Luretta Adams did not use excessive force against Weaver. With the benefit of liberal construction, Weaver argues that the jury erred by finding in favor of Evans and Adams because Weaver's testimony shows that Evans beat him without provocation and that Adams failed to intervene.

The district court had previously denied summary judgment in favor of Evans and Adams, and, as such, Weaver's claims against them proceeded to trial. The district court granted summary judgment on Weaver's claims against three other defendants. Despite the foregoing, Weaver confusingly further asserts that the district court erred by granting summary judgment in favor of Evans and Adams.

It is neither clear nor apparent that Weaver intended to appeal the granting of the summary judgment, as his notice of appeal references the jury verdict, the date of the trial, and three_ alleged trial errors. See *C.A. May Marnie Supply Co. v. Brunswick Corp.*, 649 F.2d 1049, 1056 (5th Cir. 1981) (per curiam); Fed. R. App. P. 3(c)(1)(B). His appellate brief specifically addresses his claims against Evans and Adams and completely fails to mention the three defendants who were dismissed via summary judgment, his claims against those three defendants, or the district court's dismissal of those claims.

Thus, we lack jurisdiction to address any appeal of the district court's grant of summary judgment. See *Pope v. MCI Telecomms. Corp.*, 937 F.2d 258, 266 (5th Cir. 1991). With regard to the sufficiency of the jury verdict, Weaver has failed to provide a transcript as required by Rule 10 of the Federal Rules of Appellate Procedure. See Fed. R. App. P. 10(b); *Powell v. Estelle*, 959 F.2d 22, 26 (5th Cir.

1992) (per curiam), superseded by statute on other grounds as recognized by *Diaz v. Collins*, 114 F.3d 69 (5th Cir. 1997). We have the discretion to dismiss an appeal if the appellant fails to provide a transcript. See *RecoverEdge L.P. v. Pentecost*, 44 F.3d 1284, 1289 (5th Cir. 1995) (citing *Richardson v. Henry*, 902 F.2d 414, 416 (5th Cir. 1990) (dismissing appeal based on sufficiency of the evidence because appellant failed to include a transcript)), overruled on other grounds as recognized by *In re Ritz*, 832 F.3d 560 (5th Cir.

2016). We cannot review the jury's verdict without the trial transcript. Because Weaver has failed to produce the transcript of the trial, we decline to review the jury's verdict. See *Richardson*, 902 F.2d at 415-16.

The district court's judgment is **AFFIRMED**. 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.