

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Leslie J. Davis, Jr. v. Brad Livingston, Bryan Collier, Matt Gross, Kevin Wheat, and Billy Reeves

No. 16-40732 · No. No. 16-40732 · Decided June 29, 2017

SUMMARY

The Fifth Circuit dismissed Leslie J. Davis, Jr.'s appeal for lack of jurisdiction because the district court's transfer order under 28 U.S.C. § 1404(a) was nonfinal. The court stated that a petition for writ of mandamus was the appropriate means to challenge the transfer and denied Davis's motion to hold the defendants in contempt.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Edith H. Jones; Carl E. Stewart; Edith B. Clement
JURISDICTION	Federal
DECIDED	June 29, 2017
DOCKET	No. 16-40732
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff appealed an order transferring his 42 U.S.C. § 1983 action from the Southern District of Texas to the Eastern District of Texas under 28 U.S.C. § 1404(a).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Leslie J. Davis, Jr. v. Brad Livingston, Bryan Collier, Matt Gross, Kevin Wheat, Billy Reeves

TOPICS

[appellate jurisdiction](#)[interlocutory appeal](#)[appellate procedure](#)[section 1983](#)[civil rights](#)

PRACTICE AREAS

[appellate procedure](#)[civil rights](#)[prisoner litigation](#)

QUESTIONS PRESENTED

1. Whether the Fifth Circuit had jurisdiction to review the district court's non-final transfer order under 28 U.S.C. § 1404(a).
2. Whether the appeal should be dismissed and Davis's motion for a contempt order denied.

HOLDINGS

1. The Fifth Circuit lacked jurisdiction to review the non-final transfer order through a direct appeal.
2. The motion for an order holding the defendants in contempt was denied.

KEY QUOTATIONS

“We lack jurisdiction to review this non-final decision.” (1-2)

“Instead, a petition for writ of mandamus is the appropriate means for contesting the order.” (2)

FACTUAL BACKGROUND

Leslie J. Davis, a Texas prisoner, brought an action under 42 U.S.C. § 1983 against state prison officials. The Southern District of Texas transferred the action to the Eastern District of Texas pursuant to 28 U.S.C. § 1404(a). Davis attempted to appeal the transfer order and separately sought an order holding the defendants in contempt.

PROCEDURAL HISTORY

The Southern District of Texas transferred Davis's § 1983 action to the Eastern District of Texas under § 1404(a). Davis appealed the transfer order. The Fifth Circuit dismissed the appeal for lack of jurisdiction because the transfer order was non-final and denied his motion seeking a contempt order against the defendants.

DISPOSITION

dismissed

CASES CITED

- In re Volkswagen of Am., Inc., 545 F.3d 304, 319 (5th Cir. 2008) (en banc)
- Askanase v. Livingwell, Inc., 981 F.2d 807, 809-10 (5th Cir. 1993)

OPINION

PER CURIAM.

Case: 16-40732 Document: 00514053753 Page: 1 Date Filed: 06/29/2017 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals No. 16-40732 Fifth Circuit FILED Summary Calendar June 29, 2017 Lyle W. Cayce LESLIE J. DAVIS, JR., Clerk Plaintiff-Appellant v. BRAD LIVINGSTON; BRYAN COLLIER; MATT GROSS; KEVIN WHEAT; BILLY REEVES, Defendants-Appellees Appeal from the United

States District Court for the Eastern District of Texas USDC No. 9:16-CV-76 Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM: * Leslie J. Davis, Jr., Texas prisoner # 676293, appeals an order by the United States District Court for the Southern District of Texas transferring his 42 U.S.C. § 1983 action to the Eastern District of Texas pursuant to 28 U.S.C. § 1404(a).

We lack jurisdiction to review this non-final decision. See *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008) (en banc); *Askanase* * 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. Case: 16-40732 Document: 00514053753 Page: 2 Date Filed: 06/29/2017 No. 16-40732 v. Livingwell, Inc., 981 F.2d 807, 809-10 (5th Cir.

1993). Instead, a petition for writ of mandamus is the appropriate means for contesting the order. See *Volkswagen*, 545 F.3d at 308-09. The appeal is DISMISSED, and the motion for an order holding the defendants in contempt is DENIED. 2