

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

West v. Thompson

No. 19-31039, United States Court of Appeals for the Fifth Circuit (January 29, 2021)

SUMMARY

West v. Thompson, 5th Cir. (2021) (unpublished) – Prisoner §1983 action alleging Eighth Amendment violations from double-celling policy in administrative segregation/protective custody and excessive force. The district court granted summary judgment for defendant Thompson (no personal involvement, policy not unconstitutional) and dismissed claims against Hunt for failure to effect timely service. The Fifth Circuit denied IFP and dismissed the appeal as frivolous because the appellant abandoned challenges to the district court's rulings and failed to raise nonfrivolous issues. Key topics: Eighth Amendment, double-celling, summary judgment, IFP, frivolous appeal, abandonment of claims.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Willett; Ho; Duncan
JURISDICTION	Federal
DECIDED	January 29, 2021
DOCKET	19-31039
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the district court's grant of partial summary judgment and dismissal for failure to serve; IFP motion on appeal.
STANDARD OF REVIEW	For IFP motion, the court determines whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).' See <i>Baugh v. Taylor</i> , 117 F.3d 197, 202 (5th Cir. 1997). Summary judgment is reviewed under the standard of Fed. R. Civ. P. 56(a): 'if the pleadings and evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'
PRECEDENTIAL VALUE	Unpublished
PARTIES	Titus Lee West v. Darian Thompson; Richard Hunt

TOPICS

civil rights

prisoners rights

summary judgment

appellate procedure

PRACTICE AREAS

Civil Rights

Prisoner Litigation

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment to Thompson on the double-celling policy claim.
2. Whether the district court erred in dismissing claims against Hunt for failure to effect timely service.
3. Whether West's challenge to the lack of direct personal involvement by Thompson regarding the use of force was properly rejected.

HOLDINGS

1. The policy of double-celling inmates in administrative segregation on protective custody is not unconstitutional under *Rhodes v. Chapman* and *Bell v. Wolfish*. West failed to demonstrate a nonfrivolous issue for appeal on this claim.
2. West abandoned any challenge to the dismissal of Hunt by not addressing it on appeal.
3. West abandoned any challenge to this determination by not addressing it on appeal.

KEY QUOTATIONS

"He must show that his 'appeal involves legal points arguable on their merits (and therefore not frivolous).'"
(2)

"Summary judgment is proper if the pleadings and evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." (2)

"The nonmovant 'cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.'" (2)

FACTUAL BACKGROUND

West, a Louisiana prisoner at Louisiana State Penitentiary in Angola, brought a 42 U.S.C. § 1983 action against prison officials Darian Thompson and Richard Hunt. He alleged that the defendants violated the Eighth Amendment by adopting a policy of double-celling inmates in administrative segregation on protective custody. He also alleged that excessive force was used against him by another correctional officer when he refused to return to his cell due to threats from his cellmate. The district court granted partial summary judgment to Thompson on the double-celling claim and dismissed Hunt for failure to effect timely service.

PROCEDURAL HISTORY

The district court granted partial summary judgment to Thompson on the Eighth Amendment double-celling claim and dismissed Hunt for failure to effect timely service. West appealed. The district court certified the

appeal as not in good faith. West moved to proceed IFP on appeal.

DISPOSITION

dismissed

CASES CITED

- Baugh v. Taylor, 117 F.3d 197 (5th Cir. 1997)
- Howard v. King, 707 F.2d 215 (5th Cir. 1983)
- Hernandez v. Yellow Transp., Inc., 670 F.3d 644 (5th Cir. 2012)
- Hathaway v. Bazany, 507 F.3d 312 (5th Cir. 2007)
- Raj v. La. State Univ., 714 F.3d 322 (5th Cir. 2013)
- Brinkmann v. Dallas Cnty. Deputy Sheriff Abner, 813 F.2d 744 (5th Cir. 1993)
- Rhodes v. Chapman, 452 U.S. 337 (1981)
- Bell v. Wolfish, 441 U.S. 520 (1979)
- Porter v. Epps, 659 F.3d 440 (5th Cir. 2011)

OPINION

PER CURIAM.

Case: 19-31039 Document: 00515726496 Page: 1 Date Filed: 01/29/2021 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED January 29, 2021 No. 19-31039 Lyle W. Cayce Clerk Titus Lee West, Plaintiff—Appellant, versus Darian Thompson, Assistant Warden, in their Individual Capacities; Richard Hunt, Former Colonel, in their Individual Capacities, Defendants—Appellees.

Appeal from the United States District Court for the Middle District of Louisiana USDC No. 3:19-CV-332 Before Willett, Ho, and Duncan, Circuit Judges. Per Curiam:* Titus Lee West, Louisiana prisoner # 485180, moves for leave to proceed in forma pauperis (IFP) from the dismissal of his 42 U.S.C. § 1983 civil rights complaint against Darian Thompson and Richard Hunt, both of whom at the time of the alleged incident were employed by the Louisiana * Pursuant to 5th Circuit Rule 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 Circuit Rule 47.5.4.

Case: 19-31039 Document: 00515726496 Page: 2 Date Filed: 01/29/2021 No. 19-31039 Department of Corrections at the Louisiana State Penitentiary in Angola. West asserted that the defendants violated the Eighth Amendment by adopting a policy of double celling inmates who were confined in administrative segregation on protective custody. He further alleged that excessive force was used against him by another correctional officer when he refused to return to his cell due to threats made by his cellmate.

The district court granted partial summary judgment in favor of Thompson and dismissed West's claims against Hunt for failure to effect timely service. By moving to proceed IFP, West challenges the certification that his appeal is not in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). He must show that his "appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir.

1983) (citation omitted). We may dismiss the appeal "when it is apparent that an appeal would be meritless." See *Baugh*, 117 F.3d at 202 & n.24; see 5th Cir. R. 42.2. "Summary judgment is proper if the pleadings and evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 650 (5th Cir.

2012); see Fed. R. Civ. P. 56(a). The nonmovant "cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007) (internal quotation marks and citations omitted). West does not challenge the district court's determination that he failed to allege direct personal involvement on the part of Thompson with regard to the use of force.

Thus, any challenge is now deemed abandoned. See *Raj v. La. State Univ.*, 714 F.3d 322, 327 (5th Cir. 2013); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1993). 2 Case: 19-31039 Document: 00515726496 Page: 3 Date Filed: 01/29/2021 No. 19-31039 Although West disputes Thompson's identification of Directive No. 09.046 as the policy utilized to implement the double celling of inmates confined in administrative segregation on protective custody, he fails to demonstrate a nonfrivolous issue for appeal with respect to the district court's determination that the policy was not unconstitutional.

See *Rhodes v. Chapman*, 452 U.S. 337, 348-49 (1981); *Bell v. Wolfish*, 441 U.S. 520, 542 (1979). Thus, he also fails to demonstrate a nonfrivolous issue for appeal with respect to the grant of summary judgment in favor of Thompson. See *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011).

Finally, West does not challenge the district court's dismissal of his claims against Hunt for failure to effect timely service. Thus, these claims are deemed abandoned. See *Raj*, 714 F.3d at 327; *Brinkmann*, 813 F.2d at 748.

Because West identifies no nonfrivolous issue for appeal, his IFP motion is DENIED, and the appeal is DISMISSED as frivolous. See *Baugh*, 117 F.3d at 202 & n.24; 5th Cir. R. 42.2. 3