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9-14-2005

Ray v. Brooks

Precedential or Non-Precedential: Non-Precedential

Docket No. 04-4658

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DPS-303 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-4658

FREDERICK T. RAY, III,
Appellant

v.

BROOKS, SERGEANT; CAPTAIN WILSON;
RUSTIN, DEPUTY; SERGE,
LT.; SANDEFUR, CPL.; DUANE, COUNSELOR,
CELL EXTRACTION UNIT 7

_____

_____
On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(Civ. No. 03-cv-1050)
District Judge: Honorable John P. Fullam

_____

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2) or Possible Summary Action under Third Circuit LAR 27.4 and I.O.P. 10.6
July 14, 2005

BEFORE: ROTH, BARRY and SMITH, CIRCUIT JUDGES

(Filed: September 14, 2005)

_____

OPINION

_____

PER CURIAM

Frederick Ray filed this civil rights action pro se pursuant to 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Pennsylvania, alleging due process violations.[1] Ray alleges that Appellees, correctional officers and prison officials at Chester County Prison, violated his constitutional rights when they forcibly removed him from his cell and subsequently deprived him of a meaningful disciplinary hearing. Ray seeks damages and declaratory relief.

After approximately six months of discovery, Ray filed a motion to compel an answer to interrogatories and production of documents. In an order entered April 13, 2004, the District Court denied this motion without prejudice, noting that Appellees' response indicated that they had fulfilled Ray's discovery requests. The record reflects that Ray filed no further discovery motions. Appellees moved for summary judgment, attaching prison records and Ray's deposition in support of their argument that there were no issues of material fact because the allegations in Ray's complaint were unsupported by any evidence. Ray filed a motion for a thirty day enlargement of time in which to respond. The District Court granted Ray's motion, extending the response deadline to November 8, 2004. Ray did not file a response to the summary judgment motion. In an order entered November 30, 2004, the District Court granted summary judgment in favor

[1]As the parties are familiar with the facts, we recite them here only as necessary to our discussion. We note that the District Court consolidated this case with two other cases brought by Ray, Ray v. Cell Extraction Unit (7), Civ. No. 03-873, and Ray v. Walker, Civ. No. 03-3093.

of Appellees, explaining that there was no evidence in the record to show that Appellees had acted improperly in transferring Ray to an isolation cell or that Ray's due process rights were violated in connection with his disciplinary hearing. On the same day that the District Court issued its summary judgment order, Ray filed a motion pursuant to Federal Rule of Civil Procedure 56(f) for a continuance in order to conduct further discovery. The District Court denied this motion as moot on December 7, 2004. Ray appeals from the District Court's order granting summary judgment.

The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. We have appellate jurisdiction under 28 U.S.C. § 1291. We review the district court's grant of summary judgment *de novo*, viewing the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion. Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 235 (3d Cir. 1995). Summary judgment is appropriately granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A party opposing a summary judgment motion cannot rest upon the "mere allegations or denials of the adverse party's pleading" but must respond with affidavits or depositions setting forth "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). As the District Court noted, Appellees supported their summary judgment motion with prison records and Ray's deposition. Ray was allowed discovery, yet filed no response to the summary judgment motion. On the record before the District Court, Appellees were

entitled to judgment as a matter of law. We find no abuse of discretion in the District Court's denial of Ray's discovery motion. See In re Fine Paper Antitrust Litigation, 685 F.2d 810, 817-18 (3d Cir. 1982).

We recognize that Ray filed a motion for a continuance under Federal Rule of Civil Procedure 56(f), asserting a need for further discovery. Ray's motion was received by the Clerk of the District Court on November 29, 2004, the same day that the District Court issued its summary judgment order and twenty-one days after the thirty day extension of time had expired.[2] While there is no fixed time limit for filing a Rule 56(f) motion, under these circumstances, Ray's motion was not filed within a reasonable time, and the District Court had no reason to defer acting on Appellees' motion.[3] See Resolution Trust Corp. v. North Bridge Assocs., Inc., 22 F.3d 1198, 1204 (1st Cir. 1994); see also Ashton-Tate Corp. v. Ross, 916 F.2d 516, 520 (9th Cir. 1990).

For the foregoing reasons, we will affirm the order of the District Court granting summary judgment to Appellees.

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[2]We do not review the order denying the Rule 56(f) motion, as it was not appealed. See Union Pacific Railroad Company v. Greentree Transp. Trucking Co., 293 F.3d 120, 125-26 (3d Cir. 2002).

[3]It does not appear from the record that the District Judge had Ray's Rule 56(f) motion before him when he was deciding the Defendants' summary judgment motion.