IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
November 17, 2017
Lyle W. Cayce
Clerk

No. 15-30486

Consolidated with Case No. 15-30892

RONNIE KEITH DAVIS,

Plaintiff-Appellant

v.

BENJAMIN MADDIE,

Defendant-Appellee

Appeals from the United States District Court
for the Western District of Louisiana
USDC No. 1:09-CV-1450

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Plaintiff Ronnie Keith Davis, Louisiana prisoner # 455331, was attacked by another inmate and filed a 42 U.S.C. § 1983 lawsuit asserting claims against prison officials and doctors. *See Davis v. LeBlanc*, 539 F. App'x 626, 627 (5th Cir. 2013). We previously affirmed summary judgment as to all defendants but one and remanded for further proceedings as to his claim

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

against prison guard Benjamin Maddie. *See id.* at 627-28. Davis now appeals from (1) the judgment entered following the jury verdict against him and (2) the denial of his motion for relief from the judgment. Because the matter is now fully briefed, Davis's motion for a temporary restraining order regarding his law library access is DENIED as moot.

First, we review for abuse of discretion the district court's decision not to appoint counsel for Davis in this § 1983 action. *Naranjo v. Thompson*, 809 F.3d 793, 799 (5th Cir. 2015). Considering the straightforward nature of Davis's claim against Maddie and his demonstrated ability to investigate and present his case, denial of counsel was neither an abuse of discretion nor structural error. *See id.* For the same reasons, Davis's motion for appointment of counsel on appeal is DENIED. Davis also fails to demonstrate that the district court erred by facilitating his request for the assistance of inmate counsel.

Second, we review for abuse of discretion the district court's decision not to estop Maddie from contradicting a stipulation, entered by his counsel and then retracted as mistaken, that Davis had identified his attacker as an enemy before the attack. *See United States ex rel. Long v. GSDMIdea City, L.L.C.*, 798 F.3d 265, 271 (5th Cir. 2015); *Coastal States Mktg. v. Hunt*, 694 F.2d 1358, 1368-69 (5th Cir. 1983). Because the evidence and testimony at trial contradicted the stipulation, Davis has failed to establish any abuse of discretion. *See GSDMIdea City*, 798 F.3d at 271; *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*, 610 F.3d 249, 262-63 (5th Cir. 2010); *see also New Hampshire v. Maine*, 532 U.S. 742, 753 (2001) ("[I]t may be appropriate to resist application of judicial estoppel when a party's prior position was based on inadvertence or mistake.") (internal quotation marks and citation omitted). For the same reasons, the stipulation is not a basis for reexamining the dismissal of the other defendants, which was previously affirmed by this court

and is now the law of the case. *See Fuhrman v. Dretke*, 442 F.3d 893, 896 (5th Cir. 2006); *Davis*, 539 F. App'x at 627-28.

Third, we review for abuse of discretion the denial of Davis's motion pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure. *McCorvey v. Hill*, 385 F.3d 846, 848 (5th Cir. 2004). Davis's vague and conclusory allegations of fraud, witness-tampering, and improper actions by opposing counsel and by the district court fell short of the clear and convincing evidence required for relief pursuant to Rule 60(b)(3). *See Longden v. Sunderman*, 979 F.2d 1095, 1103 (5th Cir. 1992). The district court's succinct denial of Davis's motion without an evidentiary hearing was not an abuse of discretion. *See McCorvey*, 385 F.3d at 850.

AFFIRMED; MOTIONS DENIED.

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BENJAMIN MADDIE,

Defendant - Appellee

Appeals from the United States District Court
for the Western District of Louisiana

ON PETITION FOR REHEARING EN BANC

(Opinion _____, 5 Cir., _____, _____ F.3d _____)

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Edith H. Jones

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT COURT OF LOUISIANA

ALEXANDRIA DIVISION

RONNIE KEITH DAVIS
(D.O.C. #455331)

VERSUS

JAMES LEBLANC, ET AL.

DOCKET NO: 09-cv-1450; SEC. P

JUDGE JAMES T. TRIMBLE, JR.

MAGISTRATE JUDGE JAMES D. KIRK

JUDGMENT ON JURY VERDICT

THIS MATTER having come before the Court on trial before jury on the 18th, 19th, and 20th days of May, 2015, the jury having rendered its unanimous verdict finding that St. Benjamin Maddie neither knew nor should have known Harold Anderson would attack Ronnie Davis and further finding that St. Benjamin Maddie did not act with deliberate indifference in failing to prevent the attack on Ronnie Davis, thereby finding no liability on the part of defendant, St. Benjamin Maddie.

IT IS THE ORDER of this Court that any and all claims asserted by plaintiff in the above referenced and numbered cause be and are hereby dismissed with prejudice at petitioner's cost.

THUS DONE AND SIGNED in Alexandria, Louisiana on this 8th day of June, 2015, at Alexandria, Louisiana.

JUDGE JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE