

United States Court of Appeals  
for the Fifth Circuit

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No. 22-40251  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 18, 2023

Lyle W. Cayce  
Clerk

DONALD FOSTER,

*Plaintiff—Appellant,*

*versus*

BILLY JACKSON, *Assistant Warden*; JODY VINCENT, *Major*; OFFICER  
MCGALA; OFFICER DUFF,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:20-CV-166

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Before KING, JONES, and SMITH, *Circuit Judges*.

PER CURIAM:\*

Donald Foster, Texas prisoner # 1038609, filed a 42 U.S.C. § 1983 action against various prison officials at the Polunsky Unit, alleging that they were depriving him of his personal property, exposing him to extreme heat, and discriminating against him based on his race. He moved the district court to grant him a temporary restraining order (TRO) against the officials. The

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 22-40251

district court accepted the magistrate judge's recommendation to deny the TRO motion as moot because the Texas Department of Criminal Justice's website reflected that Foster was no longer housed at the Polunsky Unit. Foster now appeals the denial and moves for leave to proceed in forma pauperis (IFP) on appeal.

Our jurisdiction is limited to appeals from final decisions of the district courts. 28 U.S.C. § 1291. Certain interlocutory orders pertaining to injunctions are immediately appealable under 28 U.S.C. § 1292. However, we do not have appellate jurisdiction over the denial of an application for a TRO because it does not qualify as an "injunction" under § 1292(a)(1). *Matter of Lieb*, 915 F.2d 180, 183 (5th Cir. 1990) (internal quotation marks omitted).

Accordingly, the appeal is DISMISSED, and Foster's IFP motion is DENIED AS UNNECESSARY. Foster is reminded that, because he has accumulated at least three strikes under 28 U.S.C. § 1915(g), he is barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

**\*\*NOT FOR PRINTED PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

DONALD FOSTER	§	
VS.	§	CIVIL ACTION NO. 9:20cv166
BILLY JACKSON, ET AL.	§	

**ORDER ACCEPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION**

Donald Foster, proceeding *pro se*, filed the above-styled civil rights lawsuit. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the denial of a motion for temporary restraining order filed by plaintiff as moot.

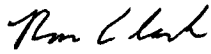
The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections to the Report and Recommendation were filed by the parties.

**ORDER**

The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ACCEPTED**. The motion for temporary restraining order (doc. no. 6) is **DENIED** as moot.

**So Ordered and Signed**

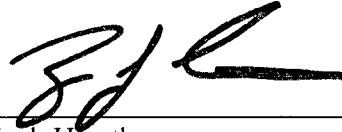
Aug 8, 2021

  
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Ron Clark  
Senior Judge



findings and legal conclusions accepted by the district court, *Douglass v. United Serv. Auto. Ass'n.*, 79 F.3d 1415, 1429 (5th Cir. 1996) (*en banc*).

SIGNED this 8th day of July, 2021.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', written over a horizontal line.

Zack Hawthorn  
United States Magistrate Judge