

United States Court of Appeals for the Fifth Circuit

No. 22-40251
Summary Calendar

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.

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

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

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

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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.

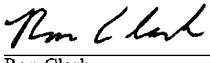
The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections to the Report and Recommendation were filed by the parties.

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


Ron Clark
Senior Judge

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. §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Donald Foster, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above styled civil rights lawsuit. This matter was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Plaintiff has filed a motion seeking a temporary restraining order (doc. no. 6). At the time he filed his complaint and his motion, plaintiff was incarcerated at the Polunsky Unit. According to the website operated by the Texas Department of Criminal Justice, plaintiff has been transferred to the Estelle Unit. A transfer to another correctional facility renders a claim for injunctive relief based on conditions at a litigant's former correctional facility moot. *Cooper v. Sheriff, Lubock County*, 929 F.2d 1078, 1084 (5th Cir. 1991); *Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988). As a result, plaintiff's motion seeking a temporary restraining order should be denied as moot.

Recommendation

Plaintiff's motion for a temporary restraining order should be denied as moot.

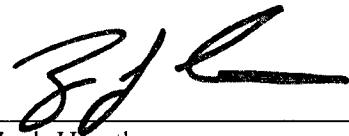
Objections

Objections must be (1) specific, (2) in writing, and (3) served and filed within 14 days after being served with a copy of this report. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(b) and 72(b).

A party's failure to object bars that party from (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of unobjected-to factual

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.



Zack Hawthorn
United States Magistrate Judge