

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-6340

LUIS ANTONIO ROSADO, JR.,

Plaintiff - Appellant,

v.

JOSHUA BARNES; QUAMANYNE M. JOHNSON; LARRY GRIER;
MICKEEYN ROBINSON,

Defendants - Appellees,

and

SUPERINTENDENT FLEMMINGS; ERIC RIGGS; DA'SHONE JOYNER,

Defendants.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:19-ct-03358-BO)

Submitted: July 31, 2024

Decided: August 20, 2024

Before WILKINSON, RICHARDSON, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Luis Antonio Rosado, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Luis Antonio Rosado, Jr., appeals the district court's order entering judgment in favor of Appellees—Joshua Barnes, Quamayne Johnson, Larry Grier, and Mickeeyn Robinson—following a jury trial on Rosado's 42 U.S.C. § 1983 claims asserting that Appellees used excessive force against him.

Rosado raises several claims on appeal. First, he contends that Appellees admitted records of disciplinary infractions Rosado incurred after the date of the alleged excessive force. The record does not support this contention. Next, he contends that Appellees committed perjury, but he provides no support for that claim, and we will not second-guess the jury's credibility determinations. Third, he contends that Appellees failed to preserve security camera footage that would have supported his claims, but Appellees asserted—and Rosado does not refute—that there were no cameras in the staff bathroom where the incident occurred. Finally, he contends the district court erred in failing to rule until after trial on his motion to compel witnesses. However, Rosado did not present argument in favor of his motion, and he has not established what testimony those witnesses would have offered. Thus, the district court did not err.

Accordingly, we affirm the district court's judgment. We also deny all pending motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-CT-3358-BO

LUIS ANTONIO ROSADO, JR.,)
)
Plaintiff,)
)
v.) ORDER
)
QUAMANYNE M. JOHNSON,)
)
Defendant.)

On November 1, 2022, the court dismissed all claims against all defendants except plaintiff's claim that defendants Joshua Barnes ("Barnes"), Larry Grier ("Grier"), Mickeeyn Robinson ("Robinson"), and Quamayne M. Johnson ("Johnson") used excessive force against him in violation of the Eighth Amendment. On August 31, 2022, the Clerk of Court made an entry of default as to defendant Johnson. On January 6, 2023, plaintiff filed a motion for default judgment. See (DE 93). The court subsequently held a trial on plaintiff's excessive force claim against defendants Barnes, Grier, and Robinson, and the jury determined by a preponderance of the evidence that these defendants did not "use[] force against the Plaintiff maliciously and sadistically for the very purpose of causing Plaintiff harm on December 18, 2018." ((DE 119), p. 1).

On March 20, 2023, the court denied plaintiff's motion for default judgment against defendant Johnson. In making its determination, the court reasoned that plaintiff's excessive force claim against defendant Johnson is so closely related to his excessive force claim against defendants Barnes, Grier, and Robinson that a finding of liability as to plaintiff's excessive force claim against defendant Johnson would be logically inconsistent with the jury's verdict. See Frow v. De La Vega.

82 U.S. 552, 554 (1872); Gulf Coast Fans, Inc. v. Midwest Elecs. Imps., Inc., 740 F.2d 1499, 1512 (11th Cir. 1984); Jain v. Nexgen Memantine, Inc., No. 8:20-cv-2263-VMC-JSS, 2022 WL 17995003, at *2 (M.D. Fl. Dec. 9, 2022), adopting R&R, 2022 WL 17992272 (Dec. 29, 2022)).

Accordingly, the court dismisses plaintiff's excessive force claim against defendant Johnson. See Essex Ins. Co. v. Napple's Bullpen, LLC, No. 5:13CV115, 2013 WL 6834604, at *6 (N.D.W. Va. Dec. 23, 2013) ("[I]f the suit is found in favor of the remaining, non-defaulting defendants, then the defaulting party is entitled to the same finding. *Id.* On the other hand, if the merits are decided against the remaining, non-defaulting defendants, the defaulting party will have the same finding applied to it.") (citing Frow, 82 U.S. at 554). All claims against all parties have now been resolved.

The Clerk is DIRECTED to enter judgment as follows:

- (1) Plaintiff's claims against defendant Superintendent Flemmings are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and plaintiff's claims against all defendants arising out of alleged missing property are dismissed without prejudice;
- (2) Pursuant to the court's November 1, 2022, order on defendants' motion for summary judgment, plaintiff's claims against defendants Eric Riggs and Da'Shone Joyner, and plaintiff's official capacity claims are dismissed;
- (3) Pursuant to the jury verdict rendered on February 28, 2023, plaintiff has not established by a preponderance of the evidence that defendants Barnes, Grier, and Robinson each individually used force against the plaintiff maliciously and sadistically for the very purpose of causing Plaintiff harm on December 18, 2018;

(4) Plaintiff cannot establish liability as to his excessive force claim against defendant Johnson, and plaintiff's excessive force claim against Johnson is DISMISSED.

SO ORDERED, this the 23 day of March, 2023.


TERRENCE W. BOYLE
United States District Judge

FILED: September 17, 2024

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v.

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MICKEEYN ROBINSON

Defendants - Appellees

and

SUPERINTENDENT FLEMMINGS; ERIC RIGGS; DA'SHONE JOYNER

Defendants

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Richardson, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk

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