

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10665
Summary Calendar

LARRY APPLEBY,

Plaintiff-Appellant,

versus

NFN GUERRA, Sergeant; NFN MARTINEZ, Correctional
Officer; TAYLOR COUNTY, TEXAS, A POLITICAL ENTITY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:97-CV-293

March 20, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

Larry Appleby, Texas inmate #784925, appeals the judgment for the defendants after Appleby presented his evidence at the bench trial before the magistrate judge.** See FED. R. CIV. P. 52(c). Appleby argues that he proved his case against the defendants. We have carefully reviewed the arguments and the appellate record. From our independent review, we conclude that the magistrate judge did not err. Appleby failed to meet his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** The parties proceeded to final judgment before the magistrate judge. See 28 U.S.C. § 636(c).

burden in demonstrating deliberate indifference by the two individual defendants and in identifying a municipal policy by the municipal defendant. See Board of the County Comm'rs v. Brown, 520 U.S. 397, 403-04 (1997); Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Appleby's remaining arguments are without merit. The magistrate judge did not err in denying default judgment, or reconsideration of that order, because the defendants had answered the complaint and because Appleby was not entitled to summary judgment. See Fed. R. Civ. P. 55(a), (c), 56; Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). No abuse of discretion is detected in the denial of Appleby's motion for recusal. See Liteky v. United States, 510 U.S. 540, 555 (1994); United States v. MMR Corp., 954 F.2d 1040, 1045-46 (5th Cir. 1992).

AFFIRMED.