

31 Fed.Appx. 160

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47-5.3, 47-5.4. (Find CTA5 Rule 28 and Find CTA5 Rule 47)

United States Court of Appeals,
Fifth Circuit.

Jake AYERS, Jr., Etc.; et al., Plaintiffs,
Jake Ayers, Jr., Private Plaintiffs,
Plaintiff-Appellant

Lillie B. Ayers; Leola Blackmon; Randolph Walker;
Henry Bernard Ayers; Dr. Ivory Phillips;
Approximately 4,000 Petitioners, Affiants, Parties
In Interest and Otherwise Participants in the
Ayers Controversy, also known as Lillie B. Ayers,
Private Plaintiffs, Appellants,

v.

Ronnie MUSGROVE, Governor, State of
Mississippi Defendant-Appellee
Board of Trustees of State Institution of Higher
Learning; Delta State University; Mississippi State
University; University of Southern Mississippi;
University of Mississippi; Mississippi University
For Women, Appellees

v.

Louis Armstrong, Movant-Appellant

No. 01-60930.

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Dec. 28, 2001.

Appeal from the United States District Court for the
Northern District of Mississippi (4:75-CV-9).

Before KING, Chief Judge, and JOLLY and DENNIS,
Circuit Judges.

Opinion

Footnotes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

PER CURIAM:*

*1 Appellants are members of a class certified under Federal Rule of Civil Procedure 23(b)(2). FED. R. CIV. PRO. 23(b)(2). After other members of the class proposed a settlement agreement but before the district court approved or rejected that agreement, Appellants filed a motion for leave to opt out of the class. The district court entered an order denying Appellants' motion to opt out, and Appellants appeal that order.

We dismiss Appellants' appeal because the district court's order is not currently appealable. First, the district court's order is not appealable under 28 U.S.C. § 1291 because it is not a final decision "that ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment." *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 86, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (internal citations and quotations omitted). Second, the district court's order is not appealable under 28 U.S.C. § 1292(a)(1) as an injunction because the order does not command action from any party, does not threaten contempt for non-action, and does not accord substantive relief to any party. See *Police Ass'n of New Orleans v. City of New Orleans*, 100 F.3d 1159, 1166 (5th Cir.1996). Third, the district court's order is not appealable as a class certification order under Federal Rule of Civil Procedure 23(f). FED. R. CIV. PRO. 23(f). Finally, the district court's order is not appealable as a collateral order because it does not resolve questions separate from the merits and is effectively reviewable on appeal from the final judgment. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 & n. 12, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978).

Appeal DISMISSED.

All Citations

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