

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-1782

Tommie E. Mason,

Appellant,

v.

Sara McQuilliams, Warden, Delta
Regional Unit; David Guntharp,
Deputy Assistant Director,

Appellees.

Tommie E. Mason,

Appellant,

v.

Sara McQuilliams, Warden, Delta
Regional Unit; David Guntharp,
Deputy Assistant Director,

Appellees.

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Appeal from the United States
District Court for the Eastern
District of Arkansas.

[UNPUBLISHED]

Submitted: April 6, 2001

Filed: April 10, 2001

Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and FAGG,
Circuit Judges.

PER CURIAM.

Arkansas inmate Tommie E. Mason filed this 42 U.S.C. § 1983 action claiming the prison officials sued by Mason (collectively the appellees) acquiesced to the non-enforcement of the prison's smoking policy and thus showed deliberate indifference to Mason's health problems associated with second-hand cigarette smoke. Following an evidentiary hearing, the district court granted judgment for appellees and Mason appealed.

Having reviewed the record, we find no abuse of discretion in the district court's refusal to grant Mason a default judgment as a discovery sanction against appellees, see Ackra Direct Marketing Corp. v. Fingerhut Corp., 86 F.3d 852, 856 & n.4 (8th Cir. 1996) (standard of review); or in denying Mason leave to amend sought two years into the proceedings, and which likely would have been futile, see Fuller v. Sec'y of Def., 30 F.3d 86, 88-89 (8th Cir.), cert. denied, 513 U.S. 1019 (1994). Given the testimony showing Mason did not have a serious medical need and appellees took measures to enforce the smoking policy, we affirm the judgment in their favor.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.