
No. 96-1742

David Montgomery, *
Appellant, *
v. * Appeal from the United States
Darin L. Morgan; Bruce W. Meek; * District Court for the
Robert J. Herring; Brian Peters; * Western District of Missouri.
Ray Stagner; Mark Hoaglund, * [UNPUBLISHED]
Appellees. *

Submitted: February 4, 1997

Filed: February 10, 1997

Before BOWMAN, WOLLMAN, and BEAM, Circuit Judges.

PER CURIAM.

David Montgomery, a Missouri inmate, appeals the district court's¹ adverse grant of summary judgment on his 42 U.S.C. § 1983 complaint. We affirm.

We reject Montgomery's argument that the district court erred in not extending the discovery period, as Montgomery did not move for additional discovery after amending his complaint, nor did he request a delayed ruling on the summary judgment motion based on the need for additional discovery, and file an affidavit under Federal Rule of Civil Procedure 56(f). See United States v.

¹The Honorable Scott O. Wright, United States District Judge for the Western District of Missouri, adopting the report and recommendation of the Honorable William A. Knox, United States Magistrate Judge for the Western District of Missouri.

Birchem, 100 F.3d 607, 609-10 (8th Cir. 1996) (summary judgment not premature based on need for additional discovery where party did not seek delayed ruling or file affidavit under Rule 56(f)). We also reject Montgomery's claim the magistrate judge was prejudiced, as Montgomery did not move for the magistrate judge's recusal, and he has not shown there were circumstances in which the magistrate judge should have recused himself sua sponte. See West v. United States, 994 F.2d 510, 512 (8th Cir. 1993) (court's failure to recuse itself reviewed for abuse of discretion); United States v. Walker, 920 F.2d 513, 517 (8th Cir. 1990) (judge presumed impartial; party seeking recusal bears substantial burden of proving otherwise).

Accordingly, We affirm.

A true copy.

Attest:

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