

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IVORY R. MITCHELL §
v. § CIVIL ACTION NO. 6:09cv348
MICHAEL SIZEMORE, ET AL. §

MEMORANDUM OPINION AND AWARD OF JUDGMENT

The Plaintiff Ivory Mitchell, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. The parties have consented to allow the undersigned United States Magistrate Judge to enter final judgment in the proceeding pursuant to 28 U.S.C. §636(c). The sole remaining defendant in the lawsuit is former TDCJ officer Lisa Winston.

The evidence in the case shows that Mitchell was administrative porter at the Powledge Unit. Winston sexually assaulted him on three occasions, forcing him to perform sexual acts upon her. When the Office of the Inspector General conducted an investigation, Winston admitted the allegations and resigned on April 3, 2009. An arrest warrant was issued for her on charges of improper sexual activity with a person in custody. Winston was arrested on June 23, 2009, and taken to the Anderson County Jail. Mitchell testified that Winston was convicted on these charges and received a two-year sentence.

Winston was ordered to answer the lawsuit and did so. She retained private counsel, who filed a motion to withdraw from the case on October 21, 2011. This motion stated that Winston requested to proceed *pro se* and without counsel, and that she consented to counsel's withdrawal from the case. This motion was granted on November 11, 2011, and counsel provided Winston's last known mailing address, in Oakwood, Leon County, Texas, on December 9, 2011.

On January 3, 2012, the Court set a status conference hearing to be held in Tyler on February 7, 2011. Notice of the order was sent to Winston by certified mail, and the mail card was returned with the notation that it had been refused. On January 30, 2012, the Court issued an order denying the plaintiff's motion for production of documents; this order also made specific reference to the status conference on February 7. A copy of this order was also sent to Winston.

The status conference hearing was held as scheduled on February 7, 2011, but Winston did not appear. The Court determined, and so finds, that Winston is in default.

At the hearing, Mitchell testified concerning what had happened to him and the damages which he suffered. *See* Rule 55(b)(2), Fed. R. Civ. P.; Bonanza International, Inc. v. Corcellor, 480 F.2d 613, 614 (5th Cir. 1973). The Court has considered the facts and evidence and it is hereby

ORDERED that default judgment is hereby rendered in favor of the Plaintiff Ivory R. Mitchell and against the Defendant Lisa Winston in the amount of **\$100,000.00**, with interest accruing thereafter at the rate of 0.13 percent per annum, as set by the weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of judgment. 28 U.S.C. §1961. It is further

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So **ORDERED** and **SIGNED** this **8** day of **February, 2012**.



JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE