



## Kitt v. Post

931 F.2d 524 (1991) | Cited 0 times | Eighth Circuit | May 6, 1991

Wesley Kitt, a Nebraska inmate, appeals from the District Court's<sup>1</sup> order dismissing his 42 U.S.C. § 1983 claim against correctional officer Debra Post. Kitt, who is black, claimed that Post issued a misconduct report against him, for failing to comply with a sanitation rule, on the basis of his race.<sup>2</sup> After Kitt completed the presentation of his evidence at an evidentiary hearing held before the magistrate judge,<sup>3</sup> Post moved for dismissal under Federal Rule of Civil Procedure 41(b). The District Court adopted the magistrate judge's recommendation and granted the motion. We affirm.

Upon review of the record, including the transcript of the hearing, we conclude that the lower court's findings were not clearly erroneous. See *Lang v. Cone*, 542 F.2d 751, 754 (8th Cir. 1976) (clearly erroneous standard of review applies to grant of rule 41(b) motion); *Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985) (finding is not clearly erroneous unless appellate court is firmly convinced mistake has been made). Based on its findings, the District Court correctly applied the law.

Accordingly, we affirm.

1. The Honorable Warren K. Urbom, Senior United States District Judge for the District of Nebraska.
2. Kitt does not challenge on appeal the dismissal of his other claims.
3. The Honorable David L. Piester, United States Magistrate Judge for the District of Nebraska.

