

August 16, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50769
Conference Calendar

MICHELLE NURNBERG,

Plaintiff-Appellant,

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION, Huntsville, TX; UNKNOWN
TEXAS DEPARTMENT OF CRIMINAL JUSTICE INMATE TRUST FUND OFFICIALS;
UNKNOWN TEXAS DEPARTMENT OF CRIMINAL JUSTICE HOBBY UNIT MAILROOM
OFFICIALS,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:04-CV-56

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Michelle Nurnberg, Texas prisoner # 1049233, has filed a motion to proceed in forma pauperis (IFP) on appeal from the dismissal of her action under 42 U.S.C. § 1983. The district court denied Nurnberg's motion to appeal IFP and certified that the appeal was not taken in good faith.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

By moving to proceed IFP, Nurnberg is challenging the district court's certification. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). Because the merits of Nurnberg's appeal are "inextricably intertwined" with the district court's certification that the appeal was not taken in good faith, we determine both issues, denying IFP and dismissing the appeal. See id.

By Nurnberg's own admission, she was aware of both her alleged injury and its causal connection to the defendants in January 2002. Accordingly, Nurnberg's lawsuit, filed in late February 2004, was time-barred. Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992). Nurnberg fails to present any valid basis for tolling of the limitations period. Under these circumstances, the district court did not err in dismissing Nurnberg's complaint for failure to state a claim. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Nurnberg's appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2.

The district court's dismissal of Nurnberg's complaint for failure to state a claim, and the dismissal of this appeal as frivolous, both count as strikes under 28 U.S.C. § 1915(g). Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Nurnberg is CAUTIONED that if she accumulates three strikes, she will no longer be allowed to proceed IFP in any civil action or appeal filed while she is incarcerated or detained in any

facility unless she is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.