

August 21, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10625
Summary Calendar

SONYA L. CHAPMAN,

Plaintiff-Appellant,

versus

STATE OF TEXAS,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CV-1997

Before JOLLY, DENNIS and PRADO, Circuit Judges.

PER CURIAM:*

Sonya L. Chapman is appealing the district court's dismissal of her pro se 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915(e) (2)(B)(i), (ii). Chapman argues that the district court abused its discretion in dismissing her complaint without allowing her to amend to add defendants and to make a more definite statement of her claims.

The court reviews a determination that a complaint is frivolous under § 1915(e)(2)(B)(i) for abuse of discretion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Newsome v. E.E.O.C., 301 F.3d 227, 231 (5th Cir. 2002). A dismissal under § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted is reviewed under the same de novo standard as a dismissal under FED. R. CIV. P. 12(b)(6). Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997).

Chapman was entitled to file one amendment to her complaint before a responsive pleading was served. FED. R. CIV. P. 15(a). The district court abused its discretion in dismissing the complaint without allowing the amendment to be filed and considering its validity. See Bass v. Parkwood Hospital, 180 F.3d 234, 241 (5th Cir. 1999); Aguilar v. Texas Dep't of Criminal Justice, 160 F.3d 1052, 1053 (5th Cir. 1998).

The dismissal of the complaint against the State of Texas based on Eleventh Amendment immunity is affirmed. The judgment of the district court is vacated insofar as the district court denied Chapman the opportunity to amend her complaint, and the case is remanded to the district court for further consideration.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.