

July 27, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-40744  
Summary Calendar

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DOUGLAS ALAN BURDEN,

Plaintiff-Appellant,

versus

MITCH G. WOODS, Sheriff; U.P. CASSIDY, Captain; M. HEBERT,  
Deputy; U.P. MORGAN, Sergeant; U.P. VEGA, Deputy,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:04-CV-339  
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Before SMITH, DeMOSS, PRADO, Circuit Judges.

PER CURIAM:\*

Douglas Alan Burden, Texas prisoner # 1160832, appeals the dismissal without prejudice as repetitious of his 42 U.S.C. § 1983 suit. Given that the access-to-the-courts claim Burden raised therein is currently pending in Burden v. Jefferson County, No. 1:03-CV-233, the district court did not abuse its discretion in dismissing the suit without prejudice. See FED. R. Civ. P. 41(a)(2); Elbaor v. Tripath Imaging, Inc., 279 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

314, 319-20 (5th Cir. 2002). The dismissal is therefore affirmed.

The district court, however, did not address the issue Burden raised regarding whether his inmate trust fund should be credited in the amount of the filing fee withdrawn for the instant case, which fee was apparently erroneously docketed as a new cause of action distinct from cause number 1:03-CV-233. The case is therefore remanded to the district court to address Burden's entitlement, if any, to reimbursement for the filing fee in cause number 1:03-CV-339.

DISMISSAL AFFIRMED; REMANDED.