

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41447
Conference Calendar

ROBERT ROY BUTCHER,

Plaintiff-Appellant,

versus

LARRY CRAIG; KENNETH RAMEY; DANNY L. BUTCHER; EDWARD L. PARKER,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:04-CV-281

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Robert Roy Butcher, Texas inmate # 719502, appeals the dismissal, pursuant to 28 U.S.C. § 1915A(b)(1), of his pro se action asserting civil rights violations arising from the sale of property in a Texas probate proceeding.

Butcher may not seek a reversal of the Texas probate court's judgment simply by casting his complaint in the form of a civil rights action. See Phinizy v. State of Ala., 847 F.2d 282, 283 (5th Cir. 1988); Hagerty v. Succession of Clement, 749 F.2d 217,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

220 (5th Cir. 1984). Because Butcher's claims are inextricably intertwined with his probate action, the federal district court had no jurisdiction to consider them. See Phinizy, 847 F.2d at 283; Hagerty, 749 F.2d at 220. Because the appeal lacks arguable merit, it is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, the appeal is dismissed.

Butcher is warned that the district court's dismissal of his complaint as frivolous and this court's dismissal of his appeal each count as a strike under 28 U.S.C. § 1915(g) and that, if he accumulates three strikes, he will not be able to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996); 28 U.S.C. § 1915(g). He is also warned that any future filing or prosecution of paid frivolous appeals will invite the imposition of monetary sanctions.

APPEAL DISMISSED; SANCTION WARNING ISSUED.