

April 3, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41503
Summary Calendar

PRESTON D. HOWARD,

Plaintiff-Appellant,

versus

LOSSIE HOWARD HOPKINS, Operating as the Executrix of a Will
Under the Laws of Texas; SHARION FISHER, Attorney operating
as an Official of the Court who drafted and probated the
applications in their capacity of fraud upon the Court,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(No. 6:06-CV-166)

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:^{*}

Preston Howard, pro se, appeals the district court's dismissal of his claims relating to the probate of a will for lack of subject matter jurisdiction. We affirm. Howard's original complaint, filed against Lossie Edward Hopkins, the executrix of the will, and against

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sharion Fisher, an attorney involved in the probate of that will, asserted various general allegations that Hopkins and Fisher “conspired and confederated together and fraudulently collected certain monies” from the estate. Howard’s amended complaint, submitted in response to a court order seeking clarification of Howard’s claims, alleged that Hopkins and Fisher “acted under color of law and used the state laws to violate the plaintiff’s constitutional rights.” The magistrate judge to whom the case was assigned recommended that Howard’s claim be dismissed, and the district court agreed.

Howard’s complaint was properly dismissed. Hopkins and Fisher are private citizens, not government employees. Although private persons willfully participating with the state act under color of state law, the complaint does not contain facts showing that either Hopkins or Fisher did so. *Sarmiento, D.V.M. v. Tex. Bd. of Veterinary Med. Exam’rs*, 939 F.2d 1242, 1245–46, 1248 (5th Cir. 1991).

AFFIRMED.