

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 25, 2013

Lyle W. Cayce
Clerk

No. 12-31075
Summary Calendar

IN RE: VIOXX PRODUCTS LIABILITY LITIGATION

ELENA STRUJAN,

Plaintiff-Appellant

v.

MERCK AND COMPANY, INCORPORATED,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:05-MD-1657
USDC No. 2:07-CV-906

Before SMITH, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Elena Strujan, a nonprisoner, filed a civil complaint against Merck and Company, Incorporated (Merck), for damages based on her use of the drug Vioxx. Because she failed to disclose her potential claim against Merck in a prior bankruptcy petition, the district court found that the doctrine of judicial estoppel

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-31075

applied and granted Merck's summary judgment motion. The district court also denied Strujan's motion for leave to proceed in forma pauperis (IFP) on appeal.

Strujan now moves in this court for leave to proceed IFP on appeal. An IFP movant must demonstrate that she is a pauper and that she will raise nonfrivolous issues on appeal. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). Strujan has not demonstrated that she has a nonfrivolous argument for appeal regarding the district court's judicial estoppel finding and grant of summary judgment. *See Love v. Tyson Foods, Inc.*, 677 F.3d 258, 261-62 (5th Cir. 2012); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, her motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.