

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60345
Conference Calendar

ELLIS MANN,

Plaintiff-Appellant,

versus

LEON SMITH; MAXINE SMITH; JOHN DOES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:04-CV-469-GuRo

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Ellis Mann appeals the dismissal for lack of subject matter jurisdiction of his 42 U.S.C. § 1983 lawsuit seeking to have custody of his daughter restored to him. He argues that the dismissal was erroneous because the district court had jurisdiction under 42 U.S.C. § 1983 and under 28 U.S.C. § 1332 as he has recently moved to California.

The district court lacked the authority to assume jurisdiction over Mann's attempt to modify the terms of a state-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court child custody order. See Rykers v. Alford, 832 F.2d 895, 900 (5th Cir. 1987); see also Chrissy F. by Medley v. Miss. Dept. of Public Welfare, 995 F.2d 595, 599 (5th Cir. 1993). The appeal is without arguable merit and is DISMISSED as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). We caution Mann that the filing of frivolous appeals and motions will invite the imposition of a sanction.

APPEAL DISMISSED; SANCTION WARNING ISSUED.