

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30646
Conference Calendar

ALVIN WASHINGTON,

Plaintiff-Appellant,

versus

LOCAL 1524 UNION; CITY HALL, LAKE CHARLES; CITY OF LAKE
CHARLES; DAVID ALVIN VARNADO; LOCAL 1524 AMERICAN FEDERATION
OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 00-CV-2713

December 11, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Alvin Washington appeals from the judgments granting the appellees' motions to dismiss his complaint for failure to state a claim. Washington contends solely that the district court should have stricken the motions to dismiss pursuant to FED. R. Civ. P. 11 because the motions did not conform to FED. R. CIV. P. 10(a).

Washington raised his contention for the first time in the district court in a motion to strike filed after final judgment

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was entered. His motion was not timely for consideration by the district court, which did not rule on it. *Thomas v. Capital Sec. Servs.*, 836 F.2d 866, 880 (5th Cir. 1988)(en banc). The motion to strike was of no legal effect, see *United States v. Early*, 27 F.3d 140, 141 (5th Cir. 1994), and the district court need not have ruled on it.

Washington effectively raises the FED. R. CIV. P. 11 issue for the first time on appeal. Because the motion to strike was of no legal effect, the district court was not placed in a position to err, and we need not address Washington's contention that the district court erred by failing to grant the motion. See *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999), *cert. denied*, 528 U.S. 1138 (2000).

Washington's appeal is without arguable merit and is frivolous. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.

Because Washington's brief was filed before our opinion for another appeal by him, *Washington v. Pub. Serv. Comm'n*, No. 01-30584, slip op. at 2 (5th Cir. Oct. 26, 2001)(unpublished), in which we warned him about possible sanctions in future appeals, we will not impose sanctions for this frivolous appeal. We again caution Washington that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Washington is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous.

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APPEAL DISMISSED. 5TH CIR. R. 42.2. SANCTIONS WARNING
ISSUED.