

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41647
Conference Calendar

CAROLYN FOSTER; MURRELL FOSTER,

Plaintiffs-Appellants,

versus

BILLY DALE MOYE, An Individual; Donald W. Capshaw,
Individually,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:02-CV-63

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Carolyn and Murrell Foster appeal the dismissal of their 42 U.S.C. § 1983 suit pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim. We dismiss the appeal as frivolous.

Judge Moye is absolutely immune from liability. See Brinkmann v. Johnston, 793 F.2d 111, 112 (5th Cir. 1986). The Fosters' challenge to Judge Moye's credentials is a question for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the Texas courts and does not affect his immunity from suit. Cf. Holloway v. Walker, 765 F.2d 517, 523-24 (5th Cir. 1985).

The Fosters' allegation that defendant Capshaw, a private party, is liable because he conspired with Judge Moye, a state actor, to deprive them of their rights to access the courts is conclusional and therefore insufficient to survive Rule 12(b)(6) dismissal. See Lynch v. Cannatella, 810 F.2d 1363, 1369-70 (5th Cir. 1987).

This appeal is without arguable merit and is therefore dismissed. See 5th Cir. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The Fosters' pleadings contain several unflattering references to the district judge and opposing counsel. The Fosters are cautioned that the use of abusive language in future pleadings will not be tolerated and will be stricken. See Theriault v. Silber, 579 F.2d 302, 302 (5th Cir. 1978).

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.