

August 19, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30330
Conference Calendar

JESSIE STEPHENS,

Plaintiff-Appellant,

versus

SALLY GRYDER; RICHARD L. STALDER,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 02-CV-2464

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Jessie Stephens, Louisiana prisoner no. 94547, appeals the district court's dismissal of his civil rights complaint as frivolous and he argues that the district court erred by dismissing the complaint with prejudice because he paid the full filing fee.

The district court determined that Stephens' claim for reimbursement of unpaid incentive wages was frivolous because he failed to allege that the defendants intentionally deprived him

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of property and because Louisiana law provides an adequate post-deprivation remedy for his claim. We find no error in the district court's determination. Because the complaint was frivolous, it was subject to dismissal regardless whether Stephens paid the filing fee. 28 U.S.C. § 1915A. This appeal is likewise frivolous, and we dismiss it as such. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

The district court's dismissal of the complaint as frivolous and our dismissal of this appeal count as "strikes" for purposes of 28 U.S.C. § 1915(g). Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). We caution Stephens that he now has two strikes under § 1915(g) and that, if he accumulates one more strike, he may not proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.