

FILED

November 26, 2003

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-40571
Summary Calendar

DIONEL DE LA CRUZ,

Plaintiff-Appellant,

versus

AVANCE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(M-02-MC-54)

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Dionel de la Cruz appeals the district court's 11 April 2003 order denying him leave to proceed *in forma pauperis* (IFP) and instructing him on the procedures for complying with the court's prior sanction order. "[A]n order denying an application to proceed *in forma pauperis* is appealable as a final decision". *Caston v. Sears, Roebuck & Co., Hattiesburg, Miss.*, 556 F.2d 1305, 1307 (5th Cir. 1977).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

De la Cruz's sole contention on appeal is that the district court erred when it denied his IFP application. De la Cruz does not address any other aspect of the court's order. Accordingly, any assertions pertaining to the court's instruction regarding the prior sanction are waived. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

The record is unclear whether the order was a denial of de la Cruz's motion to proceed IFP in district court or a denial of his motion to proceed IFP on appeal. To the extent that the order can be construed as a denial of leave to proceed IFP in district court, the appeal is without merit. In the light of the fact that de la Cruz failed to appear at the hearing addressing his IFP request, he cannot show that the district court abused its discretion by denying IFP. See *Flowers v. Turbine Support Division*, 507 F.2d 1242, 1244 (5th Cir. 1975). (To the extent that the order can be construed as a denial of the motion to proceed IFP on appeal, the appeal is moot. See *Rocky v. King*, 900 F.2d 864, 866-67 (5th Cir. 1990). The district court ultimately granted de la Cruz leave to proceed IFP on appeal.)

AFFIRMED