

June 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20487
Conference Calendar

KEM ANTHONY MOORE,

Plaintiff-Appellant,

versus

POGO PRODUCING COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CV-453

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Kem Anthony Moore, Texas prisoner # 1198947, proceeding pro se and in forma pauperis, filed suit in federal court regarding a dispute over the mineral rights on two pieces of property. The district court dismissed the complaint with prejudice as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915A(a). Moore appeals the district court's denial of his FED. R. CIV. P. 60(b) motion.

This court reviews the denial of a FED. R. CIV. P. 60(b) motion for an abuse of discretion. Travelers Ins. Co. v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Liljeberg Enter., Inc., 38 F.3d 1404, 1408 (5th Cir. 1994); Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

Under this standard, “[i]t is not enough that the granting of relief might have been permissible, or even warranted--denial must have been so unwarranted as to constitute an abuse of discretion.” Eskenazi, 635 F.2d at 402.

Moore raises numerous arguments challenging the district court’s dismissal of his complaint that are largely irrelevant to the central issue on appeal, i.e., whether the district court abused its discretion in denying his FED. R. CIV. P. 60(b) motion. After having reviewed the record and the briefs on appeal, we conclude that Moore has failed to show that the district court’s denial of his FED. R. CIV. P. 60(b) motion was so unwarranted as to constitute an abuse of discretion. Id. The judgment of the district court is AFFIRMED.

The appellee asks this court to dismiss this appeal as frivolous. We decline to do so.

The district court’s dismissal of Moore’s complaint counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We warn Moore that, should he accumulate three strikes, he will be unable to 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).

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AFFIRMED; SANCTION WARNING ISSUED.