

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

**FILED**

August 18, 2005

Charles R. Fulbruge III  
Clerk

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No. 04-31125  
Consolidated with  
No. 05-30022  
Summary Calendar

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BARTHOLOMESS ROBICHAUX,

Plaintiff-Appellant,

versus

BURL CAIN; JAMES FELDER; DAVID BONNETT; MARK PORTACCI; CLAY  
WILLIAMS; JERRY A. ESTES; DORA RABALAIS; ANTHONY TARVER, Dr.,

Defendants-Appellees.

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Appeals from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:03-CV-804  
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Before JOLLY, DAVIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Bartholomess Robichaux, Louisiana prisoner # 91571,  
challenges the district court's denial of his application to  
proceed in forma pauperis (IFP) on appeal following the district  
court's denial of his motion for summary judgment, grant of  
summary judgment to the defendants, and dismissal of his 42  
U.S.C. § 1983 complaint against various prison officials alleging  
that inadequate ventilation in the prison harmed him by

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\* 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this opinion should not be published and is not precedent except  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.

aggravating his asthma. Robichaux is effectively challenging the district court's certification that he should not be granted IFP status because his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3).

Robichaux was not entitled to summary judgment in his favor because he did not show the absence of evidence to support the defendants' case. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-27 (1986). Nor did Robichaux satisfy his summary-judgment burden of showing the existence of a genuine factual dispute material to the issue of prison conditions such that the defendants' summary-judgment motion should have been denied. FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Because there was no genuine issue as to any material fact and the defendants were entitled to judgment as a matter of law, the district court's determination that Robichaux's appeal was not taken in good faith was correct. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

Because Robichaux has failed to show that he has a nonfrivolous issue for appeal, we uphold the district court's order certifying that the appeal is not taken in good faith. Robichaux's request for IFP status is DENIED, and his appeal is DISMISSED as frivolous. See Baugh, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED AS FRIVOLOUS.