

August 2, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-30727
Summary Calendar

JULIAN SCOTT ESPARZA,

Plaintiff-Appellant,

versus

C.J. VALLUZO; MCDONALD'S CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court for
the Middle District of Louisiana
(USDC No. 3:05-CV-259)

Before REAVLEY, WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Julian Scott Esparza appeals the dismissal of his in forma pauperis (IFP) action against his employer, the McDonald's Corporation, and several individuals as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii) for frivolity and for failure to state a claim, respectively. Reviewing the dismissal as frivolous for an abuse of discretion and

*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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 dismissal for failure to state a claim de novo, Geiger v. Jowers, 404 F.3d 371, 373 (5th Cir. 2005), we affirm for the following reasons:

1. Esparza's hand-written complaint, much like his briefing to this court, borders on unintelligible. The magistrate judge properly conducted a hearing to permit Esparza to explain his allegations pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). Esparza's explanation revealed that he was not happy with the limited number of shift hours he was scheduled to work as a hamburger cook, but that he had no evidence of any guarantee of a certain number of work hours nor of any discrimination against him on the part of McDonald's or his supervisors.
2. We agree with the magistrate that Esparza's pleadings in this action and explanation at the Spears hearing collectively fail to show that his IFP action has an arguable basis in law or fact. Geiger, 404 F.3d at 373.

AFFIRMED.