

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2007

Charles R. Fulbruge III
Clerk

No. 07-30144
Summary Calendar

HORACE L. COOK,

Plaintiff-Appellant

v.

KROLL LABORATORY SPECIALISTS;
PAT PIZZO,

Defendants-Appellees

HORACE L. COOK,

Plaintiff-Appellant

v.

TOTAL OCCUPATIONAL MEDICINE;
D.J. SCIMECA,

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
(3:06-CV-69; c/w 3:06-CV-70)

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

ORDER

Plaintiff-Appellant Horace L. Cook, proceeding pro se,
appeals the judgment of the district court dismissing Cook's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

action without prejudice for lack of subject matter jurisdiction, either federal question or diversity. All Defendants-Appellees have filed motions with this court seeking dismissal of Cook's appeal as frivolous and with prejudice for lack of jurisdiction. They also seek our determination that Cook's appeal is frivolous and ask for damages pursuant to Fed.R.App.P. 38.

Mindful of the latitude that we afford pro se litigants, we are nevertheless constrained to agree with Defendants-Appellees that Cook's abject failure to address on appeal the sole basis of the district court's dismissal of his action, viz., lack of jurisdiction, instead addressing (we think) the purported merits of his claims — which the district court obviously never reached because of its determination of lack of federal jurisdiction — makes Cook's appeal wholly without merit and frivolous as a matter of law; wherefore

IT IS ORDERED that the appeal of Plaintiff-Appellant Horace L. Cook is DISMISSED.

IT IS FURTHER ORDERED that within twenty (20) days following the date of filing of this order, Plaintiff-Appellant file with this court a pleading not to exceed twenty (20) pages in length, showing cause, if any, why we should not award just damages or single or double costs, or both, to Defendants-Appellees for any and all damages and costs that they may have incurred as a result of Plaintiff-Appellant's frivolous appeal.