

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 19, 2008

No. 07-30888
Conference Calendar

Charles R. Fulbruge III
Clerk

CLINTON M DESROCHE

Plaintiff-Appellant

v.

RODNEY STRAIN, Sheriff; MARLIN PEACHEY, Warden; NORTHCUTT,
Deputy; GIORGIANA BENNET, Lieutenant; Doctor FRENCH, Medical Doctor;
Doctor HIGGINS, Medical Doctor

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:07-CV-1372

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Clinton M. Desroche, Louisiana prisoner # 487714, has moved for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1915(e)(2) as frivolous and for failure to state a claim. The district court denied Desroche IFP status on appeal and certified that the appeal was not taken in good faith under § 1915(a)(3).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

By moving for leave to proceed IFP, Desroche is challenging the district court's certification that the appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Desroche argues that he lacks funds to pursue his appeal, but he fails to brief any argument regarding the district court's certification decision or, in particular, its dismissal of his § 1983 lawsuit as frivolous and for failure to state a claim upon which relief can be granted. Failure to identify any error in the district court's analysis is the same as if the appellant had not appealed the judgment. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Although pro se briefs are afforded liberal construction, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), even pro se litigants must brief arguments in order to preserve them. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Desroche has thus abandoned any challenge to the district court's denial of IFP on appeal. See *Brinkmann*, 813 F.2d at 748. Accordingly, we deny his IFP motion and his motion for the appointment for counsel on appeal, and we dismiss his appeal as frivolous. See 5TH CIR. R. 42.2; *Baugh*, 117 F.3d at 202 & n.24; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

The district court's dismissal of Desroche's § 1983 lawsuit as frivolous and for failure to state a claim pursuant to § 1915(e)(2) and our dismissal of this appeal as frivolous both count as strikes for purposes of § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Desroche is warned that, if he accumulates three strikes pursuant to § 1915(g), he may not proceed IFP 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." § 1915(g).

APPEAL DISMISSED; MOTIONS DENIED; SANCTION WARNING ISSUED.