

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1904
Conference Calendar

KURBY GERALD DECKER,

Plaintiff-Appellant,

versus

ROGER E. TOWERY, Judge,
97th District Court,
Henrietta, Texas and
ALYCE BONDURANT, Attorney,
Iowa Park, Texas,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:92-CV-0043-K
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Because the district court did not conduct a Spears hearing or afford Decker any other opportunity to amend his pleadings, the 28 U.S.C. § 1915(d) dismissal is premature if the complaint, viewed in its most favorable light with all its allegations accepted as true, states a colorable claim. Foulds v. Corley, 833 F.2d 52, 53-55 (5th Cir. 1987).

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Decker's action arises out of Texas state court divorce proceedings in which Decker suffered an adverse judgment. This Court has held that complaints about a state's divorce decree are properly addressed to the state's appellate courts and not to the lower federal courts. Hale v. Harney, 786 F.2d 688, 690-91 (5th Cir. 1986); see also Howell v. Supreme Court of Texas, 885 F.2d 308, 311 (5th Cir. 1989), cert. denied, 496 U.S. 936 (1990) (holding that a party may not challenge a state's highest court ruling in federal court "by clothing his or her grievance in the garb of § 1983 and alleging that the decision of the state court deprived him or her of constitutionally protected rights or interests.") (internal quotations and citations omitted). Thus, Decker may not now reopen his challenge to the state court ruling in a new federal district court proceeding.

Furthermore, Decker's pleadings do not allege facts indicating that state court judge Roger E. Towery lacked jurisdiction over the subject matter or acted in a nonjudicial capacity. Thus, Decker's claims concerning the judge are not actionable under 42 U.S.C. § 1983 because the judge is absolutely immune. See Stump v. Sparkman, 435 U.S. 349, 356-57, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

Decker also alleges that attorney Alyce Bondurant conspired with the state judge to "defraud" him. A private attorney who conspires with state officials may be liable under § 1983, even though the state officials are immune. Mills v. Criminal Dist. Court No. 3, 837 F.2d 677, 679 (5th Cir. 1988). However, Decker fails to mention the lawyer or any claim of conspiracy in his

brief on appeal. An issue not raised on appeal is deemed abandoned. Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078, 1081 n.1 (5th Cir. 1991).

The district court's dismissal was without prejudice, but since it clear that Decker's challenge to his state court proceedings is not reviewable in this Court, the judgment is modified to be with prejudice.

AFFIRMED AS MODIFIED.