

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2295
Summary Calendar

HERMAN ROSE,

Plaintiff-Appellant,

versus

ADOLPH OBAYA and
C. J. SMITH,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas

CA H 91 1189

(April 29, 1993)

Before POLITZ, Chief Judge, GARWOOD and SMITH, Circuit Judges.

POLITZ, Chief Judge:*

Herman Rose, proceeding pro se, appeals the dismissal of his civil rights action as frivolous under 28 U.S.C. § 1915(d).

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Finding neither error nor abuse of discretion, we affirm.

Background

Rose, a Texas prison inmate, uses law library facilities approximately 24 hours per week. He claims that on May 5, 1990 and June 12, 1990, corrections officer Adolph Obaya refused to permit his release from prison living quarters, delaying him 25 minutes for scheduled two-hour law library sessions. In addition Rose alleges that on August 17, 1990, while he was in the law library, corrections officer C.J. Smith took from his cell a clipboard with attached notes and medical records relevant to a pending lawsuit. Rose asserts that Smith acknowledged taking the clipboard but denied removing any papers from the cell.

Rose invoked 42 U.S.C. § 1983, alleging that Obaya and Smith denied him access to the courts, and that Smith further deprived him of his property without due process of law. He alleged that both defendants acted in retaliation for his prior use of prison grievance procedures. The district court dismissed Rose's actions as frivolous under 28 U.S.C. § 1915(d) except for the medical records claim against Smith which was dismissed without prejudice. Rose timely appealed.

Analysis

Rose first challenges the district court's dismissal of his claims as frivolous. Under 28 U.S.C. § 1915(d), district courts may dismiss as frivolous a complaint filed in forma pauperis which

"lacks an arguable basis either in law or in fact."¹ We review such dismissals only for abuse of discretion.²

Rose assigns as error the district court's dismissal of his access-to-the-courts claims. Prisoners enjoy a constitutional right of effective and meaningful access to the courts.³ However, a claimed denial of that right will not admit of relief where it visits no prejudice on the plaintiff.⁴ The minor alleged intrusion by Obaya, particularly in view of the large amount of time which Rose spends in the law library and his failure to claim any prejudice to his litigation effort, does not even arguably support an access-to-the-courts claim. Similarly, Rose did not assert the irreplaceability of any papers allegedly removed by Smith. Because Rose may, by request or subpoena, obtain copies of medical records for use as exhibits in any pending litigation, the alleged taking by Smith occasioned no prejudice. The district court did not abuse its discretion in disposing of Rose's access-to-the-courts claims.

Rose also disputes the district court's dismissal of his retaliation claims. We have recognized that 42 U.S.C. § 1983 affords a remedy where prison officials retaliate against an inmate for use of state-established grievance procedures.⁵ The

¹**Neitzke v. Williams**, 490 U.S. 319, 325 (1989).

²**Denton v. Hernandez**, 112 S. Ct. 1728 (1992).

³**Bounds v. Smith**, 430 U.S. 817 (1977).

⁴**Henthorn v. Swinson**, 955 F.2d 351 (5th Cir.) (citing **Richardson v. McDonnell**, 841 F.2d 120 (5th Cir. 1988)), cert. denied, 112 S. Ct. 2974 (1992).

⁵**Jackson v. Cain**, 864 F.2d 1235 (5th Cir. 1989).

insignificance of the alleged retaliatory acts in this case, however, compel dismissal of the retaliation claims.⁶

He next claims that the district court improperly denied his motions to compel discovery⁷ and failed to hold an evidentiary hearing. District courts enjoy wide discretion in ruling on discovery motions⁸ and, in appropriate cases, may dismiss under § 1915(d) on the basis of the plaintiff's pleadings alone, without conducting a hearing.⁹ As the district court properly rejected Rose's claims on the basis of his complaint and written responses to the magistrate judge's questions, it did not err in failing to hold an evidentiary hearing or to permit discovery¹⁰ on those claims.

The district court properly dismissed as frivolous Rose's claim that removal of documents from his cell deprived him of

⁶Compare **Jackson** (alleged retaliatory transfer to onerous work assignment involving substantial health hazard states claim under § 1983); cf. **Gibbs v. King**, 779 F.2d 1040 (5th Cir. 1986) (single incident involving imposition of minor sanction upon prisoner insufficient to prove harassment in retaliation for exercise of right of access to courts).

⁷The district court denied Rose's discovery motions as moot in view of its dismissal of his claims under § 1915(d).

⁸E.g., **Whalen v. Carter**, 954 F.2d 1087 (5th Cir. 1992); **Feist v. Jefferson County Comm'rs Court**, 778 F.2d 250 (5th Cir. 1985).

⁹**Green v. McKaskle**, 788 F.2d 1116 (5th Cir. 1986).

¹⁰See **Feist** (district court did not abuse its discretion in deferring consideration of civil rights plaintiff's discovery motions pending consideration of dismissal under 1915(d), and denying motions after dismissal).

property without due process of law.¹¹ We decline to address claims which Rose raises for the first time on appeal.¹² In view of the absence of any particularly complex issues in this case and Rose's demonstrated ability to present his claims, we deny his motion for appointment of counsel on appeal.¹³

The judgment of the district court is AFFIRMED.

¹¹See **Hudson v. Palmer**, 468 U.S. 517 (1984) (random and unauthorized official deprivations of property, even if intentional, raise no fourteenth amendment due process claim in the presence of an adequate post-deprivation remedy); **Myers v. Adams**, 728 S.W.2d 771, 772 (Tex. 1987) (prisoner has post-deprivation remedy under state law for wrongful and intentional deprivation of personal property by prison officers).

¹²E.g., **Varnado v. Lynaugh**, 920 F.2d 320 (5th Cir. 1991). In his briefs to this court, Rose suggests that Smith's removal of medical records from his cell violated the fourth amendment. Further, he claims that prison authorities improperly denied him access to the courts by requiring him to articulate necessity before granting him extra law library time, and by transferring him to a facility without an adequate law library after the initiation of the instant litigation.

¹³**Hulsey v. State**, 929 F.2d 168 (5th Cir. 1991) (only exceptional circumstances arising from the type and complexity of the case and the abilities of the individual bringing it warrant appointment of counsel on appeal for indigent § 1983 litigant) (citing **Ulmer v. Chancellor**, 691 F.2d 209 (5th Cir. 1982)).