

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-3648
Summary Calendar

JACQUELINE CARR,

Plaintiff-Appellant,

VERSUS

HONORABLE FRANCE WATTS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(CA-92-1889-E)

(February 12, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Jaqueline Carr filed a pro se and in forma pauperis 42 U.S.C. § 1983 suit against numerous state and private actors and entities alleging claims of malicious prosecution, false arrest, abuse of process, false imprisonment, illegal search and seizure, and libel. According to Carr's complaint, her arrest, detention, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

prosecution for unauthorized use of an access credit card over \$500 was pursued with malice and without probable cause. Without holding a Spears¹ hearing or further developing the claims, the district court determined that the complaint's factual allegations were clearly baseless and dismissed the suit as frivolous pursuant to 28 U.S.C. § 1915(d). The district court did not identify which factual assertions or portions of the complaint he considered to be baseless.

A complaint filed in forma pauperis can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint that lacks an arguable basis in law or fact is frivolous. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). The in forma pauperis statute gives courts "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Id. (citation omitted). "Examples of complaints within the clearly baseless category are those which describe fanciful, fantastic, or delusional scenarios." Ancar v. Sara Plasma, Inc. 964 F.2d 465, 468 (5th Cir. 1992). "Pleaded facts which are merely improbable or strange, however, are not frivolous for section 1915(d) purposes." Id. This court reviews a § 1915(d) dismissal under the abuse-of-discretion standard. Denton, 112 S. Ct. at 1734.

Carr's complaint alleges that the defendants had no evidence to support the charge against her and that they pursued the

¹ Spears v. Mccotter, 766 F.2d 179 (5th Cir. 1985).

criminal prosecution in bad faith using falsified evidence. According to her appeal brief, she was acquitted of the charge on July 24, 1992. The facts alleged in support of Carr's claims are not outside "the reasonable bounds of credulity." See Ancar, 964 F.2d at 470. Furthermore, claims of false arrest, false imprisonment, and malicious prosecution are encompassed within § 1983. Thomas v. Kipperman, 846 F.2d 1009, 1011 (5th Cir. 1988). Thus, as Carr's claims are not facially frivolous as a matter of law and the factual allegations with respect to her claims are not clearly baseless, the dismissal of the claims as frivolous constituted an abuse of discretion.²

Accordingly, we vacate the dismissal and remand the case to the district court for further proceedings, including in the court's discretion, a Spears hearing, or other appropriate factual development.

Reversed and remanded.

²It should be noted that the district court did not dismiss Carr's action on the basis of absolute or qualified immunity. Although the record is not sufficiently developed, it appears that some of the defendants may not be immune.