

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-3800  
Summary Calendar

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EDWARD J. BOURGEOIS, JR.,

Plaintiff-Appellant,

VERSUS

PARISH OF JEFFERSON, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 87 0867 N)

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(March 22, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:<sup>1</sup>

Edward J. Bourgeois, Jr. challenges the district court's dismissal of his 42 U.S.C. § 1983 action. We affirm.

I.

Bourgeois filed a complaint against the Jefferson Parish Sheriff's Office and Deputies Bernius, Weigand, Wilson, and Ventola, alleging that his civil rights were violated when they

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<sup>1</sup>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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

arrested him pursuant to a "Request for Attachment" issued by the Civil District Court of the Parish of Orleans.

Bourgeois filed an amended complaint adding defendants, including: Suzanne F. Bourgeois Johnston, his ex-wife; Marie Giuffre Foster, his ex-mother-in-law; Judge Frederick S. Ellis; Judge Bernette J. Johnson; Charles C. Foti, Jr., Orleans Parish Criminal Sheriff; the State of Louisiana; the City of New Orleans; the New Orleans Police Department; the Civil District Court for the Parish of Orleans; Daniel S. Foley, Clerk of Civil District Court for the Parish Of Orleans; Paul Valteau, Orleans Parish Civil Sheriff; Tod M. Thedy, Orleans Parish Deputy Civil Sheriff; the Orleans Parish Civil District Court Clerk's Office; and Deputy Clerk Thomas Zeoli.

The complaint arose out of proceedings in the Civil District Court of Orleans Parish in which Suzanne Johnston alleged that Bourgeois was in arrears in his child support payments. Although Bourgeois alleged violations under § 1985, the district court liberally construed his complaint to allege violations under 42 U.S.C. § 1983. The district court granted relief for all of the defendants and dismissed Bourgeois's complaint. Appellant makes a number of arguments which we consider below.

## II.

### A.

Bourgeois argues first that the district court improperly construed his complaint to allege violations under section 1983 rather than section 1985. In his complaint, Bourgeois alleged that

the defendants conspired to deprive him of his civil rights arising out of a domestic relations dispute with his ex-wife. To state a cognizable claim under section 1985, Bourgeois must allege that the defendants actions were motivated by racial, or some other invidious, class-based discrimination. **Holdiness v. Stroud**, 808 F.2d 417, 424 (5th Cir. 1987). Because Bourgeois did not alleged any class-based discrimination, the district court properly construed his complaint as alleging violations under section 1983.

B.

Bourgeois argues next that the district court erred when it dismissed the claims against the State of Louisiana and the Civil District Court of Orleans Parish (CDC) based on Eleventh Amendment immunity. The Eleventh Amendment bars suit against a state or one of its agencies unless the state consents to suit. **See Pennhurst State Sch. & Hosp. v. Halderman**, 465 U.S. 89, 100 (1984). The CDC was created by the Louisiana legislature and is an agency of the state. **See** La. Const. Art. 5, § 14; La. Rev. Stat. Ann. § 13:1136 (West 1983 & 1992). Louisiana did not consent to suit, and therefore the Eleventh Amendment bars the claims against the state and the CDC.

C.

Bourgeois contends next that Judges Ellis and Johnson were not entitled to absolute immunity. Judges are absolutely immune from damages claims arising out of acts performed in the exercise of their judicial functions. **See Graves v. Hampton**, 1 F.3d 315, 317 (5th Cir. 1993). This immunity extends to all judicial acts,

unless the acts were performed in the clear absence of jurisdiction. **See Mitchell v. McBryde**, 944 F.2d 229, 230 (5th Cir. 1991). All of the allegations against Judges Ellis and Johnson stem from judicial acts performed during the proceedings in state court. Therefore, they are entitled to judicial immunity.

D.

Bourgeois also argues that he was not treated "fairly" in the district court. The unsubstantiated allegations of unequal treatment in Bourgeois's brief appear to be nothing more than his dissatisfaction with the result in the district court and do not provide a basis for relief. **See United States v. MMR Corp.**, 954 F.2d 1040, 1045 (5th Cir. 1992); **In re Corrugated Container Antitrust Litigation**, 752 F.2d 137, 145 (5th Cir.), **cert. denied**, 473 U.S. 911 (1985).

E.

Bourgeois next argues that he was improperly denied a jury trial. Bourgeois requested a jury trial for his **Spears** hearing which the district court denied. **See Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985). A **Spears** hearing is an evidentiary hearing "in the nature of a motion for a more definite statement," and not a trial on the merits. **Id.** at 181-82. Bourgeois was not entitled to a jury at the **Spears** hearing.

Bourgeois also requested a jury trial in his amended complaint. To the extent that he argues that he was improperly denied a jury trial before his complaint was dismissed, his argument must also fail. A party is entitled to a jury trial if

there are valid factual questions. **Id.** at 180-81. However, the complaint may be dismissed without a jury trial if the legal points lack arguable merit. **Id.** Bourgeois's complaint was dismissed because it was frivolous, and therefore he was not entitled to a jury trial.

F.

Finally, Bourgeois seeks a new trial to introduce a document that allegedly establishes that the "Rule for Contempt" filed by his ex-wife was not signed by her. Bourgeois can obtain a new trial based on newly discovered evidence only, in the exercise of due diligence, the evidence could not have been discovered within the time for seeking a new trial. **See** Fed. R. Civ. P. 60(b)((2). Bourgeois clearly has not demonstrated that he exercised due diligence to obtain the evidence and therefore is not entitled to a new trial based on newly discovered evidence.

III.

Because we find no merit to any of Bourgeois's arguments, we affirm the judgment of the district court.<sup>2</sup>

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<sup>2</sup>Bourgeois also filed a motion to supplement the record with a copy of the **Spears** transcript and unidentified newly discovered evidence. Bourgeois filed a motion with this court to obtain a copy of the **Spears** transcript at government expense, and this motion was denied because he failed to demonstrate why the transcript was necessary to present a nonfrivolous issue on appeal. He has still not demonstrated that the transcript is necessary to the proper disposition of his appeal. To the extent he seeks to supplement the record with new evidence, he has not indicated what the new evidence is or how the new evidence is relevant to his appeal. We therefore deny this motion.