

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5710
Conference Calendar

REGINALD I. BAILEY,

Plaintiff-Appellant,

versus

NORTH EAST INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CV-649
- - - - -
(November 1, 1993)

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

PER CURIAM:*

Reginald I. Bailey filed a § 1983 action based on events occurring in July 1990 at the Virgil T. Blossom Pool run by the North East Independent School District. The magistrate judge granted Bailey leave to proceed in forma pauperis and pursuant to the defendants' motion ordered Bailey to complete a questionnaire in an attempt to get a more definite statement of his claim. Bailey did not answer the questionnaire. The magistrate judge

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

then ordered him to file an answer to the questionnaire and to explain to the court why he had failed to comply with the earlier order. In response to this order, Bailey filed a notice of appeal claiming that the magistrate judge was not impartial and complaining that the questionnaire was violative of his constitutional rights. The magistrate judge refused to recuse himself as Bailey had not shown any basis for such action and again ordered Bailey to answer the questionnaire. Bailey did not and the defendants moved to dismiss Bailey's suit for failure to comply with the orders of the court. The magistrate judge then issued a memorandum and recommended that the case be dismissed with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). The district court agreed.

This Court views "dismissal with prejudice for failure to prosecute [as] an extreme sanction which is to be used only when the `plaintiff's conduct has threatened the integrity of the judicial process [in a way which] leav[es] the court no choice but to deny that plaintiff its benefits.'" McNeal v. Papasan, 842 F.2d 787, 790 (5th Cir. 1988) (quoting Rogers v. Kroger Co., 669 F.2d 317, 321 (5th Cir. 1982)). The Court went on to state that a district court would abuse its discretion in entering such a dismissal unless "a particular case discloses both (1) a clear record of delay or contumacious conduct by the plaintiff, and (2) that a lesser sanction would not better serve the best interests of justice." Id.

In this case, both circumstances exist. First, there is no other apparent sanction that would have any effect on Bailey.

Imposing a fine would be futile because Bailey is proceeding as a pauper. Imposing a term of jail time would be ineffective because Bailey is already in custody for some other reason. Also, it is certain that an admonition from the court would be useless because Bailey has three times ignored the advisory orders of the magistrate judge. As a result, no sanction but dismissal with prejudice would make any difference to Bailey.

Second, the record is replete with Bailey's delay tactics and contumacious conduct. Over the course of these proceedings Bailey has thrice refused to comply with the magistrate judge's order that he answer these questions. Bailey has gone so far as to call the magistrate judge's actions "dilatatory, burdensome, [and] frivolous." Bailey has also made a totally baseless request that the magistrate judge recuse himself based on unfavorable rulings in other cases. See Davis v. Board of School Commissioners of Mobile County, 517 F.2d 1044, 1051 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976).

Taken together, the above acts demonstrate that Bailey has nothing but contempt for the judicial process and the district court was justified in refusing to allow Bailey to continue to abuse the system. Additionally, the magistrate judge and the district court did not act rashly in this matter, but gave Bailey three chances to pursue his claim. The dismissal with prejudice was warranted. Bailey is cautioned that if he persists in filing frivolous actions, the full panoply of sanctions, including contempt of court, will be brought to bear.

AFFIRMED.