

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7296
Conference Calendar

EARTHEL B. HILL,

Plaintiff-Appellant,

versus

N. MCCLURE, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-G-87-346
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The district court dismissed Earthel B. Hill's civil rights action as frivolous under 28 U.S.C. § 1915(d). A § 1915(d) dismissal is reviewed for abuse of discretion. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992). A district court may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis either in law or in fact. Id. In Moore v. Mabus, 976 F.2d 268, 270 (5th Cir. 1992), this Court established a framework for determining when a district court has abused its discretion in dismissing a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

case under § 1915(d). An appellate court should consider whether "(1) the plaintiff is proceeding pro se, 2) the court inappropriately resolved genuine issues of disputed fact, (3) the court applied erroneous legal conclusions, (4) the court has provided a statement of reasons which facilitates 'intelligent appellate review,' and (5) any factual frivolousness could have been remedied through a more specific pleading." Id. (citation omitted).

The district court abused its discretion in dismissing Hill's suit as frivolous. Hill's allegations of being required to work in the furniture factory in violation of his medical restrictions state a claim of deliberate indifference to his serious medical needs. See Jackson v. Cain, 864 F.2d 1235, 1246-47 (5th Cir. 1989).

The district court erroneously dismissed this claim because it found no evidentiary support. The district court evaluated the evidence and made an improper credibility determination based on Hill's prison records that he was ordered to work in the furniture factory due to negligence and not due to deliberate indifference. District courts are allowed to make limited credibility determinations for the purposes of § 1915(d), but this is limited to the inherent plausibility of a prisoner's allegations based on objective factors. Cay v. Estelle, 789 F.2d 318, 326 (5th Cir. 1986). A district court "may consider credibility as a factor in determining frivolousness only to the extent that it believes a prisoner's allegations are almost impossible to prove, conflict with facts which may be judicially

noticed, or postulate facts of a wholly fanciful kind." Id. at 327. The facts alleged by Hill do not fall within those categories.

The district court improperly relied on Hill's prison records to refute his allegations that he was deliberately required to work in violation of his medical restrictions. The district court noted that his medical records did include a medical restriction from working in the furniture factory. Hill's allegations are internally consistent with the medical records and are not inherently implausible. See Pedraza v. Meyer, 919 F.2d 317, 319 (5th Cir. 1990); Wesson v. Oglesby, 910 F.2d 278, 280-82 (5th Cir. 1990).

It was an abuse of discretion for the district court to dismiss the claim, at that point in the proceedings, as frivolous for lack of proof. Hill stated a non-frivolous claim and should be given the opportunity to offer his proof. See Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

The judgment of the district court is VACATED and this case is REMANDED to the district court for further proceedings.