

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1171
Summary Calendar

RUDOLPH LANCE FLORES, in Behalf
of Himself and All Those Similarly
Situated, and on Behalf of Addison
Joseph Flores,

Plaintiff-Appellant,

versus

THEO BEDARD, Judge for the 330th
Judicial District Court of Texas,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas
(3:92-CV-1757-G)

(August 27, 1993)

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

POLITZ, Chief Judge:*

Rudolph Lance Flores, individually and on behalf of his minor
son, appeals the 28 U.S.C. § 1915(d) dismissal of his civil rights,

*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should not be published.

civil RICO, and state law claims. We affirm in part and vacate and remand in part.

The Flores complaint arises out of extended custody and divorce proceedings in Texas state court during the course of which Flores alleges his ex-wife, her attorney, various state court judges and prosecutors, several City of Dallas police officers, and others all engaged in a conspiracy to violate his due process rights, interfere with his relationship with his son, and cause him financial hardship.

Dismissal of an *in forma pauperis* petition under section 1915(d) may be appropriate if the district court is convinced the action is frivolous or malicious. An action is frivolous if it lacks an arguable basis either in law or fact.¹ We review a district court's section 1915(d) dismissal only for abuse of discretion.² In making that determination, we may 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."³

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

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

³ **Moore v. Mabus**, 976 F.2d 268, 270 (5th Cir. 1992) (citing **Denton**).

The section 1983 claims against the various judicial officers and those alleged to have conspired with them properly were dismissed. We have long held that a plaintiff may not collaterally attack state court proceedings by couching pleadings as a civil rights suit.⁴ Under the **Feldman** doctrine,⁵ federal courts are without jurisdiction to review state court decrees. **Feldman's** jurisdictional bar applies to constitutional claims which are "inextricably intertwined with the state court's [decision] in a judicial proceeding"⁶ and to claims "anchored to alleged deprivations of federally protected due process and equal protection rights."⁷ Despite protestations that plaintiffs "do not seek to re-litigate state domestic actions," their allegations against the various judges are predicated on the merits of particular actions taken during the course of the state proceedings. To the extent that there was any constitutional error in the state courts' decisions, the available recourse was through

⁴ **Chrissy F. by Medley v. Mississippi Dept. of Public Welfare**, 995 F.2d 595 (5th Cir. 1993); **Bogney v. Jones**, 904 F.2d 272 (5th Cir. 1990); **Brinkmann v. Johnston**, 793 F.2d 111 (5th Cir. 1986); **Hale v. Harney**, 786 F.2d 688 (5th Cir. 1986); **Reed v. Terrell**, 759 F.2d 472 (5th Cir. 1985); **Kimball v. The Florida Bar**, 632 F.2d 1283 (5th Cir. 1980); **Sawyer v. Overton**, 595 F.2d 252 (5th Cir. 1979).

⁵ **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462 (1982).

⁶ 460 U.S. at 483 n.16.

⁷ **Id.** at 485.

the state appellate process, and ultimately to the United States Supreme Court, not to federal district court.⁸ Given these jurisdictional barriers, these civil rights claims lack an arguable basis in law and properly were dismissed under section 1915(d).⁹

The plaintiffs also bring a section 1983 claim alleging deprivation of their guarantee clause rights in that they were deprived of fair and honest state judicial officials. Claims arising under the guarantee clause present nonjusticiable political questions.¹⁰ Accordingly, this claim has no arguable basis in law.

The civil RICO claims have no arguable basis in law because the plaintiffs lack standing. "[T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation."¹¹ Furthermore, there must be a direct causal

⁸ See **Chrissy F.; Hagerty v. Succession of Clement**, 749 F.2d 217 (5th Cir. 1984), cert. denied, 474 U.S. 968 (1985).

⁹ These claims are also barred by the absolute immunity afforded judges for actions taken in their judicial capacities. See **Thomas v. Sams**, 734 F.2d 185, 189 (5th Cir. 1984) ("[A]bsolute immunity extends to all judicial acts unless such acts fall clearly outside the judge's subject-matter jurisdiction."), cert. denied, 472 U.S. 1017 (1985). The claims against the prosecutors also would be barred by prosecutorial immunity. See **Imbler v. Pachtman**, 424 U.S. 409 (1976). Claims brought against immune defendants may be dismissed as frivolous under section 1915(d) because they are based upon meritless legal theory. **Neitzke**, 490 U.S. at 327.

¹⁰ E.g., **Luther v. Borden**, 48 U.S. (7 How.) 1 (1849).

¹¹ **Sedima, S.P.R.L. v. Imrex Co.**, 473 U.S. 479, 496 (1985); see 18 U.S.C. § 1964(c).

relationship between the injury and the alleged predicate acts.¹² The primary injuries alleged by the plaintiffs include loss of familial relationships and mental distress. These are not injuries to "business or property."

The district court inadvertently overlooked Flores' claim that he was unlawfully arrested by City of Dallas police officers who allegedly were conspiring with his ex-wife and others.¹³ "The right to be free from illegal arrest plainly enjoys [constitutional] protection."¹⁴ Thus, such a claim has an arguable basis in law. Further, the factual allegations do not "rise to the level of the irrational or the wholly incredible," so the claim may not be dismissed as factually frivolous.¹⁵

We VACATE and REMAND for consideration of the claims against the City of Dallas police officers for alleged unlawful arrest only; in all other respects the judgment of the district court is AFFIRMED.

¹² **Marriot Bros. v. Gage**, 911 F.2d 1105 (5th Cir. 1990).

¹³ The district court's oversight apparently was due to the fact that although the police officers are named as defendants in the caption and discussed in the factual allegations, the portion of the complaint describing the parties does not include their names.

¹⁴ **Thomas v. Sams**, 734 F.2d at 191.

¹⁵ **Denton**, 112 S.Ct. at 1733.