

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1506
Conference Calendar

CHRIS LOPEZ,

Plaintiff-Appellant,

versus

SAMMY LUJAN ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-129-C
- - - - -
(October 29, 1993)

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

PER CURIAM:*

Chris Lopez filed a 42 U.S.C § 1983 complaint, alleging that the defendant's false statements endangered the health and welfare of his family. Lopez made the same factual allegations in a previously filed in forma pauperis (IFP) complaint that was dismissed as frivolous. Lopez is appealing the district court's dismissal of his second suit based on Lopez's abuse of the judicial process.

Section 1915(d) authorizes the dismissal of an in forma

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pauperis (IFP) complaint if the action is frivolous or malicious. See 28 U.S.C. § 1915(d). An IFP complaint that "merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of section 1915(d)" as malicious. Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988) (citation omitted). The complaint is repetitive if it alleges "substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff." Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir.), cert. denied, 493 U.S. 969 (5th Cir. 1989) (citation omitted). The dismissal of a complaint on this basis is reviewed for an abuse of discretion. Id. at 849-50.

The factual basis for Lopez's present complaint was identical to the factual basis alleged in the first complaint. The only difference between the two complaints is that Lopez labeled Lujan's statements as slanderous and defamatory in the second complaint. Lopez's complaint is clearly duplicative of his prior federal litigation.

Lopez's initial complaint merely stated a state common law tort claim. See Grandstaff v. City of Borger, Tex., 767 F.2d 161, 172 (5th Cir. 1985), cert. denied, 480 U.S. 916 (1987) (infliction of emotional distress is a state common law tort); Geter v. Fortenberry, 849 F.2d 1550, 1556 (5th Cir. 1988) (allegations of defamation and slander which do not involve an injury to a tangible interest are subject to the protection of state tort laws and are not cognizable under § 1983). Because there was no legal basis for Lopez's initial § 1983 complaint, it

was deemed to have been dismissed with prejudice. See Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993) (IFP complaints dismissed as a matter of law are presumed to be dismissed with prejudice unless the district court specifies otherwise).

Because the claims raised in Lopez's present complaint have been previously adjudicated on the merits, the district court did not abuse its discretion in dismissing the complaint for an abuse of the judicial process. The appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.