

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-1513  
Summary Calendar

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REUBEN E. DELOACH,

Plaintiff-Appellant,

VERSUS

TEXAS DEPARTMENT OF PUBLIC SAFETY, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas

(93 CV 89)

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(February 10, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Appellant Reuben DeLoach is an electrical engineer who was employed by General Dynamics Corporation off and on from January 20, 1981, until he was involuntarily laid off on January 28, 1991. He filed a separate federal action against General Dynamics, which

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contains many of the same paragraphs included in his complaint in the instant case. In his amended complaint herein, DeLoach named 10 defendants: the Texas Department of Public Safety, Tarrant County Sheriff's Department, White Settlement Police Department, Fort Worth Police Department, the Department of Defense, the DEA, the FBI, the IRS, the United States Postal Service, and the Department of the Air Force.

DeLoach's complaint alleges that from the day he began working for General Dynamics, the "defendant" or "defendants" engaged in a conspiracy to harass him and to entice him into committing various illegal acts. However, he neither states which defendant or defendants was or were culpable nor does he name any of the alleged "agents" or "actors." In paragraph 3, he states that "it is not known with certainty which defendants are the principals that participated in the criminal violations directed against [him], and which defendants have provided supporting services as accomplices." DeLoach suggests that "the Mail Service has provided mail interception," but he alleges no particulars. He requested compensatory and punitive damages, the latter to "be paid to non-profit and public service organizations of the plaintiff's choosing," and that "compensation and relief be provided to any other victims proven to have been damaged because of the defendant's [sic] criminal acts." Judge Mahon, to whom this case was assigned, and Judge Terry R. Means, who has DeLoach's case against General Dynamics, ordered the cases consolidated for purposes of a hearing pursuant to 28 U.S.C. § 1915(d), DeLoach

having filed them IFP. DeLoach testified at length at his hearing, at which Judge Mahon presided.

At the hearing, DeLoach conceded that his allegations are "bizarre." He still did not name any of the alleged "agents" or "actors." Moreover, he conceded that, as stated in the complaint, he did not know what police organization(s) may have cooperated with General Dynamics to attempt to "frame" him. He agreed that he had not alleged any facts connecting these ten defendants with anything General Dynamics may have done to him. Moreover, DeLoach admitted that he had no evidence implicating any of the ten. He opined that if he could have discovery against these ten defendants and General Dynamics, he "hope[d] that [he could show] that [GD] didn't act alone in these matters."

Judge Mahon ruled that DeLoach could proceed IFP with his action against General Dynamics. However, he dismissed the instant action without prejudice as being frivolous, pursuant to § 1915(d). The court observed that DeLoach's "only basis for implicating the defendants in this action in acts [allegedly] performed by General Dynamics employees is that he cannot believe General Dynamics or its employees would have perpetrated the acts on their own."

#### OPINION

DeLoach contends that the district court erred by dismissing his action on authority of § 1915(d), without examining the "items of evidence" he brought to the hearing. He asserts that "many facts exist to connect the government [sic] to violations as cited in [his] documents." He also complains that he was not allowed to

bring (unidentified) witnesses to testify at the hearing and that the district court refused "to examine and consider a police surveillance hardware item found in [his] automobile." However, DeLoach does not set forth any facts in his brief which would implicate any of the ten governmental defendants in what General Dynamics allegedly has done to harm him.

On authority of § 1915(d), "a court may dismiss a claim as factually frivolous . . . if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional." Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). (internal quotation marks and citations omitted). The Court held that "[a]s those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Id.

Contrary to DeLoach's assertion, the district court did not demand that he produce actual evidence of the defendants' complicity at the hearing. The court only asked DeLoach if he had any such evidence; he conceded that he did not have, but that he hoped to obtain such by discovery. The hearing occurred more than nine months after filing suit, during which time he presumably had the opportunity to obtain discovery in his action against General Dynamics, yet he still fails to set forth facts which would implicate the defendants. Accordingly, the district court did not err by dismissing the action without prejudice on authority of §

1915(d). Denton v. Hernandez.

DeLoach contends that he is entitled to relief on grounds that the district court Clerk refused to serve the defendants. Service of process was not required or appropriate prior to the district court's making its § 1915(d) determination. Spears v. McCotter, 766 F.2d 179, 181-82 (5th Cir. 1985). As discussed under Issue One, the district court did not err by dismissing the action pursuant to § 1915(d).

DeLoach contends that he is entitled to relief on grounds that there were errors in the hearing transcript, that he was not allowed to listen to the tape recording of the hearing or to tape-record it, and that he was not allowed to make himself a copy of the hearing transcript. These contentions lack merit because he alleges only minor errors in the transcript; this also shows that he had adequate access to the transcript. See Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126 (1988).

The judgment of the trial court is AFFIRMED.