

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1530
Conference Calendar

AARON ISBY,

Plaintiff-Appellant,

versus

GIFT HOTLINE, INC.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-880-T
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Aaron Isby appeals the district court's dismissal of his complaint under 42 U.S.C. § 1983 as frivolous.

A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a pauper's complaint as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). Isby's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contention lacks basis in law.

To recover under § 1983, a plaintiff must prove that he was deprived of a federal right and that he was deprived of that right by a person acting under color of law. Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). "A state is not responsible for a private party's decisions unless it `has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.'" Daique v. Opelousas Health Care, 774 F.2d 1344, 1349 (5th Cir. 1985)(quoting Blum v. Yaretsky, 457 U.S. 991, 1004, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982)).

Isby does not, and cannot, allege that Gift Hotline acted as a state actor. His appeal therefore is frivolous.

APPEAL DISMISSED. See 5th Cir. R. 42.2.