UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1552
Summary Calendar

CURTIS BRYANT, JR.,

Plaintiff-Appellant,

versus

MICHAEL J. WATTS and
KENNETH P. STRIPLING,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:92 CV 2610 D)

(August 13, 1993)

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

PER CURIAM:[*]

Curtis Bryant, Jr. appeals the dismissal as frivolous of his civil rights action against Kenneth Strippling, the Clerk of Court of the Texas Court of Appeals for the Fifth Judicial District.

Bryant maintains that Strippling violated his constitutionally

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

guaranteed right to access to the courts when he refused on three separate occasions to file a petition for mandamus. In each of the three instances Bryant was notified that his filing did not comply with Rule 121 of the Texas Rules of Appellate Procedure. Bryant invokes 42 U.S.C. § 1983 and seeks unspecififed damages and injunctive relief. The district court found that Bryant's claims lacked any arguable basis in law or fact and dismissed same; Bryant timely appealed.

Rule 121, as the Texas courts have noted, contains detailed requirements. The rule mandates that "at the commencement of an original proceeding for a writ of mandamus . . . in an appellate court, the Relator shall deliver to the Clerk . . . a substantial number of documents. Rule 121 is a lengthy, detailed rule which provides how an original proceeding . . . is to be commenced. . . ."[1] Bryant does not suggest that his filings met the express requirements of Rule 121. Rather, he contests the Clerk's authority to reject his submissions.

Assuming, per **arguendo**, that Bryant is correct in his assertion that under Texas law the Clerk may not reject non-conforming pleadings, the question remains whether Bryant has alleged a cognizable denial of federal rights. Stripling is entitled to absolute immunity for refusing to accept Bryant's writ of mandamus.[2] Accordingly, Bryant's claim for damages lacked an arguable basis in fact or law and was properly dismissed pursuant

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[1]**King v. Price**, 750 S.W.2d 356 (Tex. App.--Beaumont 1988).

[2]**Williams v. Wood**, 612 F.2d 982, 985 & n. 3 (5th Cir. 1980).

to 28 U.S.C. § 1915(d).[3] This immunity does not extend, however, to Bryant's claim for equitable relief.[4]

That Stripling is not absolutely immune in the injunction phase does not resolve whether that request is frivolous. To the contrary, in order to state a cogent claim for equitable relief Bryant must demonstrate the absence of adequate legal remedies and irreparable harm.[5] As noted, Bryant does not claim to have filed a writ application which complied with Rule 121. Unless and until such a filing is made, Bryant has not availed himself of an obvious, adequate legal remedy and, accordingly, no injunction may issue. His claim for equitable relief is patently frivolous.

The judgment of the district court is AFFIRMED.

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[3]**Nietzke v. Williams**, 490 U.S. 319 (1989) (1915(d) dismissal appropriate where the defendant clearly is entitled to immunity).

[4]**Pulliam v. Allen**, 466 U.S. 522 (1984).

[5]**Id.**