IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2057
Conference Calendar

PETER D. VAN DER JAGT, Next Friend
Representative for Minors Culver W.
Van Der Jagt and Grant D. Van Der Jagt,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA, Congress of
the United States of America,

Defendant-Appellee.

- - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 92-CV-2405-H
- - - - - - - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Peter D. Van Der Jagt appeals the district court's dismissal of his civil complaint under Fed. R. Civ. P. 12(b)(6), in which he alleged that "off-line budgeting and deficit spending, without representation," is a violation of his minor children's constitutional rights.

This Court will dismiss as frivolous any appeal that is devoid of arguable merit. Howard v. King, 707 F.2d 215, 219-20

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(5th Cir. 1983); 5th Cir. R. 42.2. This appeal is part of the continuing saga of Van Der Jagt's frivolous pro se filings in district court. On June 2, 1993, Van Der Jagt was sanctioned for filing frivolous pro se appeals and barred from filing further pleadings in this Court unless a Circuit or district judge within this jurisdiction authorizes the filing. See Van Der Jagt v. Brown, No. 93-2003, at 3-4 (5th Cir. June 2, 1993) (unpublished). Van Der Jagt filed his brief for this appeal on February 12, 1993, before the imposition of sanctions; therefore, we have considered his appeal.

Van Der Jagt fails to raise any non-frivolous argument that Congress expressly and specifically waived its sovereign immunity. He argues that the failure by Congress to make a timely appearance amounted to an implied waiver of sovereign immunity. This argument, although legally frivolous, also has no basis in fact because the Senate responded to Van Der Jagt's complaint within 60 days of service of process as required by Fed. R. Civ. P. 12(a).

Van Der Jagt argues that the district court erred when it denied his motion for entry of default. In light of the Senate's response to Van Der Jagt's complaint within 60 days, an entry of default was inappropriate. See Van Der Jagt v. Brown, at 2-3. The district court's denial of Van Der Jagt's default motion was therefore not an abuse of discretion. See Mason v. Lister, 562 F.2d 343, 345 (5th Cir. 1977).

The district court did not err in its Rule 12(b)(6) dismissal, nor abuse its discretion in its denial of Van Der

Jagt's motion for entry of default. Because he fails to raise any issue of arguable merit, his appeal is DISMISSED.