UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2706
Summary Calendar

MICHAEL EASTON,

Plaintiff-Appellant,

VERSUS

VIC WISNER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92 1274)

September 5, 1995

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Easton challenges the district court's dismissal of his § 1983 action seeking injunctive relief and damages against two Harris County (Texas) Assistant District Attorneys, Vic Wisner and Natalie Fleming. Finding no error, we affirm.

I.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Michael Easton was convicted of theft in Texas state court in February 1990. The trial court sentenced him to a ten-year probated sentence. Two days after Easton was sentenced in 1990, Harris County Assistant District Attorney Vic Wisner moved for revocation of Easton's probation because Easton had provided a false social security number on his probation data sheet. The trial court granted the motion and issued a capias warrant for Easton's arrest.

The Texas Court of Appeals for the Eleventh Judicial District eventually affirmed Easton's conviction, but remanded the case for resentencing because the state trial court erroneously determined that Easton was ineligible to have probation imposed by the jury. The Texas Court of Criminal Appeals subsequently denied Easton's petition for discretionary review of his conviction. On remand, the trial court resentenced Easton to a ten-year probated sentence.

Easton filed the instant § 1983 action in April 1992 claiming that Assistant District Attorneys Vic Wisner and Natalie Fleming violated his constitutional rights. He also named Harris County as a defendant. Wisner and Fleming were responsible for Easton's prosecution. Easton specifically alleged that the defendants violated his constitutional rights because (1) almost three years elapsed between his arrest and his trial, (2) several senior prosecutors allegedly refused to prosecute his case because they realized that a conviction was unlikely without the use of fabricated or perjured evidence, (3) the judge who presided over his trial was a former assistant district attorney, (4) Wisner and

Fleming knowingly used perjured testimony at his trial, (5) Harris County had prosecuted him in retaliation for actions he had brought against the County, (6) the County had habitually harassed him, and (7) Wisner and Fleming improperly revoked his probation before his probation commenced. Easton requested prospective declaratory and injunctive relief barring the defendants from violating his constitutional rights in the future. Easton also sought monetary damages.

The defendants subsequently filed a Rule 12(b)(6) motion to dismiss Easton's claims. Wisner and Fleming alternatively moved for summary judgment and requested attorneys' fees. The district court granted Harris County's Rule 12(b)(6) motion and dismissed Easton's claims against the County. The district court then granted summary judgment in favor of Wisner and Fleming. The district court further granted Harris County's motion for Rule 11 sanctions and awarded the county $3,750 in attorneys' fees. The court also awarded Wisner and Fleming $2,937.50 in attorneys' fees. Easton timely appealed. Because Easton has abandoned this appeal as to his claims against Harris County, we only consider his claims against Wisner and Fleming.

II.

A.

We first address Easton's argument that the district court erred in granting summary judgment to Wisner and Fleming on Easton's claim for prospective and injunctive relief. This part of

Easton's complaint seeks relief for alleged malicious conduct by the prosecutors in prosecuting him and causing his probation to be revoked by the district court. After reviewing the record, we agree with the defendants that these claims are moot.

A case is moot for Article III purposes if "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormick, 395 U.S. 486, 496 (1969). A narrow exception to the mootness doctrine occurs when issues are "capable of repetition yet evading review." Vieux Carre Property Owners, Residents & Assoc. v. Brown, 948 F.2d 1436, 1447 (5th Cir. 1991). This exception requires the showing of a reasonable expectation or a demonstrated probability that the challenged conduct will be repeated and affect the same plaintiff. Id. at 1447 and n. 41.

Easton's request for prospective injunctive relief is moot because his trial has been completed and because he served thirty-one days following the revocation of his probation and is again on probation.[2] Easton fails to demonstrate a likelihood that the defendants have any plans to prosecute him on further charges, or that the defendants will likely seek to revoke his probation in the future. The district court therefore correctly dismissed Easton's claims for injunctive relief against Wisner and Fleming.

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[2] Because Easton seeks purely prospective injunctive relief against future prosecutions and probation revocations, he does not seek to overturn his conviction or sentence. Even if Easton sought to overturn his conviction, such relief is not cognizable under § 1983. See Heck v. Humphrey, ___ U.S. ___, 114 S.Ct. 2364, 2372 (1994).

B.

Easton next challenges the district court's dismissal of his damages claims against Wisner and Fleming on grounds of absolute prosecutorial immunity. He argues that absolute prosecutorial immunity does not extend to parole or probation revocation proceedings. The law is clearly contrary to Easton's position. In Farrish v. Mississippi State Parole Bd., 836 F.2d 969, 975-76 (5th Cir. 1988), this court held that judicial officers involved in the probation process are entitled to absolute immunity from claims arising from parole or probation revocation proceedings. Therefore, Easton's argument is without merit.

C.

Easton argues last that the district court erred in imposing sanctions and attorneys' fees pursuant to Federal Rule of Civil Procedure 11 and § 1988. 42 U.S.C. § 1988 grants district courts discretion to award attorneys' fees to prevailing parties in civil rights cases. Accordingly, we will reverse an award of attorneys' fees under § 1988 only upon an abuse of discretion. Vaughner v. Pulito, 804 F.2d 873, 878 (5th Cir. 1986). Prevailing defendants are entitled to attorneys' fees under § 1988 only when a plaintiff's underlying claim is "frivolous, unreasonable or groundless." United States v. Mississippi, 921 F.2d 604, 609 (5th Cir. 1991). A claim is frivolous if it is "so lacking in merit that it was groundless." Id.

Wisner and Fleming are protected by absolute immunity from

Easton's damage action. Minimal legal research would have revealed that these claims were barred. Moreover, Easton has abandoned his substantive damage claims against Harris County. We therefore conclude that the district court did not abuse its discretion by awarding attorneys' fees to the defendants on Easton's damages claims.

We also agree that the district court did not err in awarding attorneys' fees as to Easton's claims for injunctive relief. Easton offered no evidence or facts suggesting that the defendants' alleged unconstitutional acts were likely to be repeated. Absent such a showing, his claims for prospective injunctive relief were clearly moot.

The district court also granted sanctions under Rule 11 for the amount of time that Harris County's attorneys spent in responding to Easton's abusive litigation tactics. We review the district court's imposition of Rule 11 sanctions under an abuse of discretion standard. Thomas v. Capitol Security Services, Inc., 836 F.2d 866, 873 (5th Cir. 1988)(en banc).[3]

The detailed list of Easton's abusive tactics is extensive. For example, he failed to serve Harris County with a copy of his summary judgment motion. He also casually and repeatedly accused opposing counsel of lying, dishonesty, and ignorance of the law. Although the district court did not warn Easton that sanctions were likely, the record reflects that the district court had previously

[3] The district court issued its sanction order on June 21, 1993. Therefore, the pre-December 1993 version of Rule 11 applies to Easton's case.

sanctioned Easton and later rescinded its sanction order. In sum, the district court did not abuse its discretion in imposing Rule 11 sanctions on Easton for his litigation tactics.

AFFIRMED.