

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-3226

(Summary Calendar)

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EARL G. DANOVE and  
FRANCIS DANOVE,

Plaintiffs-Appellants,

versus

NICK CONGEMI and  
CITY OF KENNER,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-92-3336-F)

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(April 22, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Attorney Anthony Taormina appeals the district court's order of sanctions under Fed. R. Civ. P. 11, imposed against him as attorney for plaintiffs in a civil rights suit against Nick Congemi, the City of Kenner, Louisiana Chief of Police.<sup>1</sup> We

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\* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>1</sup> The plaintiffs alleged that Congemi's adoption and implementation of a policy designed to combat domestic violence violated their constitutional rights.

dismiss Taormina's appeal as frivolous. See Local Rule 42.2 ("If . . . it shall appear to the Court that the appeal is frivolous and entirely without merit, the appeal will be dismissed.").

The district court dismissed the plaintiffs' original complaint without prejudice pursuant to Fed. R. Civ. P. 12(b)(6). After the plaintiffs filed a motion for reconsideration,<sup>2</sup> Congemi moved for sanctions against Taormina pursuant to Fed. R. Civ. P. 11, arguing that Taormina failed to comply with the affirmative duties of Rule 11 by bringing suit against him individually. The district court analyzed Taormina's conduct vis a vis the three affirmative duties under Rule 11: (1) the attorney must conduct a reasonable inquiry into the facts which support the document; (2) the attorney must conduct a reasonable inquiry into the law such that the document embodies existing legal principles or a good faith argument for the extension, modification, or reversal of existing law; and (3) the document must not be interposed for purposes of delay, harassment, or increasing costs of litigation. See *Thomas v. Capital Sec. Serv., Inc.*, 836 F.2d 866, 873-74 (5th Cir. 1988) (en banc) (stating that "an attorney . . . certifies he has complied [with these duties] by signing a pleading, motion, or other document"). The district court then sanctioned Taormina by written reprimand and ordered him to pay Congemi's attorney's fees.

Taormina's appeal from the district court's order of sanctions is frivolous and entirely without merit. A district court's order

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<sup>2</sup> The plaintiffs neither refiled their complaint nor appealed the dismissal without prejudice.

of sanctions under Rule 11 is reviewed for abuse of discretion. See *id.* at 872. Taormina fails to present even a colorable argument that the district court abused its discretion in this case.

Taormina chiefly alleges that the district court erred by sanctioning him for failing to investigate the facts underlying the plaintiffs' claims. However, the district court's order suggests that that was not the basis for its decision.<sup>3</sup> Moreover, Taormina's argument is plainly incorrect. Taormina contends that the district court should not have sanctioned him for failure to investigate the facts because the Supreme Court, in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993), decided one month after the district court entered its sanction order, overruled the heightened pleading requirement in civil rights cases.<sup>4</sup> Taormina's reliance on *Leatherman* is misplaced, because

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<sup>3</sup> Although the district court stated that it "must question the reasonableness of [Taormina's] inquiry into the facts of this case," the district court also stated that it was "reluctant to impose much of a sanction" on those grounds.

<sup>4</sup> See *Elliot v. Perez*, 751 F.2d 1472, 1473 (5th Cir. 1985) ("In cases against governmental officials involving the likely defense of immunity we require of trial judges that they demand that the plaintiff's complaint state with factual detail and particularity the basis for the claim which necessarily includes why the defendant-official cannot successfully maintain the defense of immunity."). In explaining why it "question[ed] the reasonableness of [Taormina's] inquiry into the facts of this case," the district court mentioned that Taormina's pleadings failed to satisfy the heightened pleading requirement. Taormina contends that "[u]nder *Leatherman* [the district court] might not have awarded sanctions or at least would have reduced the amount of sanctions accordingly."

the Court there dealt only with suits against municipalities. See *id.* at \_\_\_, 113 S. Ct. at 1162 ("We . . . have no occasion to consider whether our qualified immunity jurisprudence would require a heightened pleading in cases involving individual government officials.").<sup>5</sup> Taormina's argument that (1) *Leatherman* overruled the heightened pleading requirement in cases such as this one; and (2) the district court therefore erred by sanctioning him for failing to investigate the facts of this case, is frivolous.

The district court held that "Taormina failed to establish that his suit was reasonably grounded in existing law or could be considered as a reasonable extension or modification thereof." The district court determined that Taormina had not established a reasonable legal basis for claiming that Congemi was not entitled to qualified immunity. Taormina fails to present an argument challenging the district court's holding, other than an elaborate discussion of the merits of the claims against Congemi. Taormina does not contend that, contrary to the district court's holding, he made a showing that there was a reasonable legal basis for the law suit. Taormina's argument is entirely without merit.

The district court also held that "the evidence certainly suggests" that Taormina's filings after Congemi moved to dismiss "were intended to harass and unnecessarily delay the proceedings." Taormina argues that (1) "if this were the appellant's intentions, it was ineffective since all motions were promptly denied and the

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<sup>5</sup> Taormina recognizes this distinction, but offers no authority for his assertion that *Leatherman* governs suits against individual government officials.

defendant was dismissed from these proceedings very promptly;" and (2) the real reason for any delay was the City of Kenner's motion for continuance. These arguments are irrelevant to the district court's determination that Taormina's filings were made *for the purpose* of harassment and delay. Furthermore, Taormina fails to challenge the district court's finding that his filings merely reiterated claims and arguments already asserted, rather than presenting new facts or legal issues, and contained direct misstatements of law. Taormina's challenge to the district court's finding of delay and harassment is frivolous.

Accordingly, we **DISMISS** Taormina's appeal.