

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3435
Conference Calendar

WILLIE J. STEWARD, Rev.,

Plaintiff-Appellant,

versus

THE JUDGES,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-1548-M(3)

- - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.
PER CURIAM:*

Willie Steward is appealing the dismissal of his complaint based on the lack of federal jurisdiction. "Whether a federal court has jurisdiction to decide a case and whether a plaintiff has a cause of action under a federal statute are distinct inquiries that must be addressed separately." Daigle v. Opelousas Health Care, Inc., 774 F.2d 1344, 1346 (5th Cir. 1985) (citations omitted). If jurisdiction is found to exist, the district court must then address the merits of the complaint. Id. at 1347.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Steward alleged that state officials have deprived him of his constitutional right to equal protection under the law in violation of 42 U.S.C. § 1981. Title 28 U.S.C. § 1343(b) provides that the district courts have original jurisdiction over civil actions "to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights." Therefore, the district court erred in dismissing the case for lack of jurisdiction.

However, reversal is not required because it is clear on the face of the complaint that the action is frivolous. See Bickford v. International Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. 1981) (reversal is inappropriate if the ruling of the district court can be affirmed on any grounds, regardless of whether these grounds were used by the district court).

A complaint may be dismissed as frivolous if it lacks an arguable basis in law or in fact. Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). The dismissal is reviewed for an abuse of discretion. Id. at 1734.

"Litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986). This principle extends to actions "in which the constitutional claims presented [in federal court] are inextricably intertwined with the state court's grant or denial of relief." Id. (internal quotation and citation omitted). Steward is merely seeking to have his state court lawsuit reinstated for the presentation of additional evidence to

a jury. Steward has not alleged facts that support a civil rights violation.

Steward's complaint presents no arguable basis in law for relief and, therefore, its dismissal was correct, although for reasons different from those stated by the district court.

Steward's motion for appointment of counsel is DENIED.

AFFIRMED.