

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3546
Summary Calendar

GEORGE WILLIAMS,

Plaintiff-Appellant,

VERSUS

RICHARD L. STALDER, Secretary of
Department of Corrections, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-92-464-A-M1)

(November 3, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

George Williams, *pro se*, challenges the district court's imposition of Fed. R. Civ. P. 11 sanctions. Because jurisdiction is lacking, we **DISMISS** and **REMAND**.

I.

Williams, an inmate at the Louisiana State Penitentiary in Angola, has filed in excess of 300 actions in the state court system. Also, the federal district court has dismissed five of his

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

actions as frivolous. This action arises from a claim filed pursuant to 42 U.S.C. § 1983, in which Williams alleged a variety of violations of his civil rights by 41 named defendants.

A magistrate judge ordered a **Spears** hearing,² at which Williams stated that he had filed state court claims asserting the same federal violations against the same defendants. Williams stated that none had come to trial; that the state courts "ignored" his claims because he proceeded *pro se*.

The magistrate judge ordered Williams to amend his complaint to state specific factual allegations against each defendant; to identify the civil action numbers of his corresponding state actions; and to advise the court "whether any state court has entered a stay order or imposed sanctions in any civil action", and, if so, to state whether "any claim raised in this action is also the subject of a state court suit where sanctions have been levied." Thereafter, Williams stated in an amended complaint that "none of the state court suit[s] listed in this petition has been stayed nor were sanctions imposed in any of these cases".

Unsatisfied with this response, the magistrate judge issued a second order in which he clarified his request for information concerning state court sanctions. Williams responded that he had been sanctioned \$200 in state court, and that all of his cases were stayed until he paid that sanction.

The magistrate judge determined that Williams' federal action was filed for an improper purpose, i.e., seeking to avoid the state

² **Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

court sanctions by refiling the same claims in federal court. Moreover, the magistrate judge determined that Williams "intentionally failed to inform this court of the actions taken against him in the state court, knowing full well that an order imposing costs and staying his state court cases would have a material bearing on whether [he] would be allowed to proceed with his claims in this court." Consistent with these findings, the magistrate judge recommended that the following Rule 11 sanctions be imposed: a \$100 fine for costs, prohibition of the filing of further complaints unless an authorized inmate counsel substitute certified that the claim comported with Rule 11 and Williams paid a five dollar filing fee, the staying of the pending action until Williams paid the sanctions, and the closing of the pending action in six months if he did not pay the sanctions. Williams filed an objection to the recommendation; but the district court adopted it, after an independent review of the record.

Williams appealed; however, pursuant to Williams' motion, his appeal was dismissed.³ Subsequently, when the six months in which to pay the sanctions expired, the district court issued an order "administratively terminat[ing]" Williams' action. The order stated that it would not "prejudice ... the right of the parties to reopen the proceedings", and contained the following recital:

This order shall not be considered a dismissal or disposition of this matter, and should further proceedings in it become necessary or desirable,

³ The motion to withdraw followed the district court's denial of his motion for leave to proceed *in forma pauperis*. The reason for the denial was "that no judgment has yet been entered."

any party may initiate it in the same manner as if this order had not been entered.

More than 30 days after the order closing the action, Williams filed a motion for reconsideration, based on the reversal of the state court sanctions by the Louisiana Court of Appeals for failure to provide a hearing before imposing the sanctions. Because no hearing had been held on the imposition of the Rule 11 sanctions, Williams contended that Louisiana law also would require the reversal of those sanctions. The district court denied Williams' motion, noting that federal, not state, law governed its imposition of Rule 11 sanctions.

II.

We have jurisdiction over all final judgments of the district court, 28 U.S.C. § 1291, and must examine *sua sponte* that jurisdiction. **United States v. De Los Reyes**, 842 F.2d 755, 757 (5th Cir. 1988). Generally, an order imposing Rule 11 sanctions prior to the imposition of a final judgment is not appealable. **Click v. Abilene Nat'l Bank**, 822 F.2d 544, 545 (5th Cir. 1987) (per curiam). Nor does the order "administratively terminat[ing]" this action appear, on its face, to be a final judgment; in fact, it states that it is not "a dismissal or disposition of this matter". See **Pan E. Exploration Co. v. Hufo Oils**, 798 F.2d 837, 838 (5th Cir. 1986) ("Usually, a decision is final only if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.") (citations and internal quotations omitted).

The situation which we confront was forecasted by this circuit in 1988:

[T]he imposition of sanctions must not result in total, or even significant, preclusion of access to the courts.... [O]rders awarding Rule 11 sanctions prior to the entry of a dispositive order terminating the litigation are not final appealable orders for purposes of 28 U.S.C. § 1291. **Click v. Abilene Nat'l Bank**, 822 F.2d 544, 545 (5th Cir. 1987). However, if a district court imposes monetary sanctions that are made payable prior to the entry of a final appealable order, a litigant may suffer a substantial restriction on his access to the courts. Financially strapped because of the sanctions award, a litigant is unable to proceed with his case on the merits.

Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 882-83 n.23 (5th Cir. 1988) (en banc). To resolve such a situation, we reached the following solution:

[W]e conclude that if a litigant contends that a monetary sanction award precludes access to the court, the district judge must either (1) provide that the sanction is payable only at a date that coincides with or follows entry of a final order terminating the litigation; or (2) make express written findings, after a prompt hearing, as to why the award does not have such a preclusive effect.

Id.

It may be that the district court believed that it was comporting with the former option when it provided that the case would be terminated if the sanctions were not paid within six months; but, the order "administratively terminat[ing]" this action is not recognizable, on its face, as a final judgment. As noted, that order expressly disavows finality.

Because of the nature of the district court's order, jurisdiction is lacking. In light of **Thomas**, we remand this action

to the district court for it to either enter a final judgment or issue an order, "as to why the [Rule 11 sanction] does not have such a preclusive effect." See *id.* Should the district court enter the latter, it may be reviewable under the collateral order doctrine, see *Markwell v. County of Bexar*, 878 F.2d 899, 901 (5th Cir. 1989) (setting forth standards for determining if a Rule 11 sanction is appealable under the collateral order doctrine).

III.

For the foregoing reasons, the appeal is **DISMISSED** and this action is **REMANDED** to the district court for proceedings consistent with this opinion.

DISMISSED and REMANDED