

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4409
Summary Calendar

GUY SPARKMAN,

Plaintiff-Appellant,

VERSUS

GARY GWYN, ALEX BEAL, TERRY SPARKMAN,
RHONDA SPARKMAN, and the CITY OF TYLER, TEXAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:89cv373)

(April 20, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Guy Sparkman appeals the district court's dismissal of his suit against city officials in Tyler, Texas and others under 42 U.S.C. § 1983, and the Texas common law. We dismiss this appeal as frivolous and impose sanctions. **See** Local Rule 42.2.

In 1984, the City of Tyler obtained a judgment against Sparkman for delinquent property taxes. The judgment authorized a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

sale of the property to satisfy the delinquent taxes, but the sale was restricted to one of the plaintiff taxing units. In 1985, Sparkman received notice of a sheriff's sale at which the City of Tyler purchased the property.

The city later sold the property to Sparkman's son, Terry, subject to Sparkman's right of redemption, which lasted two years from the recording of the tax sale deed. Sparkman did not attempt to redeem his property.

The magistrate judge's report and recommendation details the state court litigation dealing with the precise issue Sparkman seeks to litigate in this court: the propriety of the actions of the City of Tyler in seizing and selling the property and his rights to the property following the sale.

Briefly, the first lawsuit was the action to recover the delinquent taxes. Sparkman filed an answer, and judgment was rendered, but he did not appeal. The second lawsuit was a forcible detainer action filed by Terry Sparkman against his father. A jury trial was held and a verdict was returned in favor of Terry Sparkman, but no appeal was taken. Finally, Guy Sparkman filed proofs of claim to recover the property as part of Terry Sparkman's bankruptcy proceeding. The bankruptcy court sustained Terry's objections to his father's proofs of claims, finding that the statute of limitations barred any claim arising out of breach of fiduciary duty, conversion, forcible entry and detainer, and withholding of property. Mr. Sparkman did not appeal that decision.

It is therefore abundantly clear that Sparkman's suit is barred by **res judicata**, as the magistrate judge explained in her report and recommendation.

The district court accepted the magistrate judge's recommendation and imposed a \$250 sanction against Sparkman. We believe that the district court exercised remarkable restraint in imposing such a minimal sanction and find no abuse of discretion in its imposition.

Despite the clear explanation provided by the magistrate judge as to why his complaint lacks merit, Mr. Sparkman persisted in taking this appeal. Consequently, we impose double costs against Sparkman and sanctions in the amount of \$750 to be paid to the City of Tyler to defray their costs in defending this frivolous appeal. **See** Fed. R. App. P. 38. Furthermore, we caution Mr. Sparkman that further frivolous appeals to this court involving this property will draw even more substantial sanctions.

For the foregoing reasons, we dismiss this appeal as frivolous and impose double costs and sanctions.

DISMISSED.