

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4926
Conference Calendar

EDGAR LYNN ROGERS,

Plaintiff, Counter-
Defendant-Appellant,

versus

U.S. DEPT. OF EDUCATION,

Defendant, Counter-
Claimant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 92-CV-1801
- - - - -

October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Edgar Lynn Rogers challenges the district court's grant of the defendant's motion to dismiss his action, and grant of the defendant's motion for summary judgment seeking collection of his defaulted student loan. The appeal is DISMISSED as frivolous.

See 5th Cir. R. 42.2.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Rogers, a former student at Louisiana State University, filed suit contending that the loan program through which he was loaned the money to attend school is conceptually unworkable for "black American, sub-poverty level, slum tenant recipients" such as himself. In essence, Rogers argues that he deserves \$15 million dollars and debt forgiveness from the Department of Education because it loaned him the money to attend school. Under 20 U.S.C. § 1087(a) and (b), however, Rogers's debt may only be discharged in the event of his death, total disability, or a stay of collection pursuant to an action brought under Title 11. 20 U.S.C.A. § 1087(a), (b) (1993). He does not allege, nor is there any evidence, that any of these statutory conditions apply.

In addition, although the \$15 million in damages he seeks based upon the "psychological and financial tyranny" of the Department may more appropriately sound in tort, the exhaustion of administrative remedies is a jurisdictional prerequisite to filing a suit under the Federal Tort Claims Act (FTCA). 28 U.S.C. § 2675(a); McAfee v. 5th Circuit Judges, 884 F.2d 221, 222-23 (5th Cir. 1989), cert. denied, 493 U.S. 1083 (1990).

The district court also properly granted the Department's motion for summary judgment on its counter-claim seeking enforcement of the outstanding debt on Rogers's defaulted student loan. The Department submitted a certificate of indebtedness establishing Rogers's total debt on the notes as \$2,174.68. Rogers has provided the copy of an invoice from the Department which purports to establish his debt as \$2,992.30. Although such

a discrepancy would certainly create a genuine issue of material fact sufficient to overcome a summary judgment motion, the Department's evidence in the instant case establishes Rogers's debt level as the lower of the two amounts. Therefore, unless Rogers argues that he should pay the higher of the two amounts (which he does not), there are no material facts in dispute and summary judgment was appropriate.

DISMISSED as frivolous.