

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5328

Summary Calendar

RUSSELL P. SEGURA,

Plaintiff-Appellant,

v.

SAMUEL COUVILLION,
ET AL.,

Defendants,

STATE OF LOUISIANA,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(91-CV-1579)

(September 6, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Russell P. Segura filed a civil rights complaint against Samuel Couvillion, the Clerk of Court for the Parish of Avoyelles, State of Louisiana and the State of Louisiana. In his complaint, Segura alleged that, on August 3, 1990, he had attempted to qualify for a primary election to fill two vacant seats on a Louisiana state court. Segura claimed that his constitutional rights were violated because he was not qualified to run for election on the grounds that he is not a practicing attorney. In addition to monetary damages, Segura sought an injunction against the State of Louisiana, hearings before the United States Congress, and a declaration that he is the winner of the 1990 judicial elections.

Couvillion moved for summary judgment; the district court granted Couvillion's motion for summary judgment. In reaching its determination that there were no disputed issues of material fact, the district court noted:

In his sworn deposition, the defendant stated that the plaintiff attempted to qualify for the judicial election on 3 August 1990, seven days after the qualifying period had expired. Plaintiff also presented the Clerk of court's office with a money order for \$500.00, \$100.00 less the amount required to qualify. Finally, Mr. Segura is not admitted to the practice of law in Louisiana, a state constitutional requirement for all those seeking one of the enumerated judicial positions. It is clear that the plaintiff failed to meet the minimum requirements necessary to qualify for the judicial elections, and his application was appropriately rejected.

The district court also awarded sanctions in the amount of \$1,818 because the "plaintiff failed to conduct a reasonable inquiry in order to determine whether his complaint was well-grounded in fact and warranted by existing law." Segura appealed the

district court's judgment. In a one paragraph opinion, this court affirmed both the district court's entry of summary judgment and its imposition of sanctions against Segura.

After the district court entered its final judgment on Segura's claims against Couvillion, the State of Louisiana also moved for summary judgment and sanctions. The district court granted Louisiana's motion for summary judgment. The district court noted that Segura's claims against the State of Louisiana were "exactly the same as those that were filed against defendant Samuel Couvillion." The district court imposed further sanctions against Segura in the amount of \$8,351.39. Segura appeals. We affirm.

II.

We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. Conkling v. Turner, 18 F.3d 1285, 1295 (5th Cir. 1994). First, we consult the applicable law to ascertain the material factual issues. King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence and inferences to be drawn therefrom in the light most favorable to the nonmoving party. Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party

is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).

III.

In his complaint, Segura brought claims under 42 U.S.C. §§ 1983, 1985(3), 1986, 1988, and the First, Fifth, and Fourteenth Amendments to the United States Constitution. The district court did not have jurisdiction to entertain Segura's complaint against the State of Louisiana because such a complaint is barred by the Eleventh Amendment. Hans v. Louisiana, 134 U.S. 1, 15 (1896). Therefore, the district court should have dismissed Segura's claims for lack of subject matter jurisdiction.

Next, Segura contends that the district court erred in imposing sanctions against him. Segura claims only that the district court erroneously concluded that he did not make a reasonable inquiry and that his complaint is not well-grounded in fact and existing law; Segura does not argue that the district court's sanction award was excessive or unreasonable. We review a district court's decision to impose sanctions under FED. R. CIV. P. 11 for an abuse of discretion. Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 872 (5th Cir. 1988) (en banc). Further, findings of fact used by the district court to determine that Rule 11 has been violated are reviewed under the clearly erroneous standard. Id. In reaching its conclusion that Segura had violated Rule 11 in filing his complaint against the State of Louisiana, the district court adopted the findings of its earlier ruling granting sanctions in favor of Couvillion. In that

ruling, the district court determined that "when plaintiff first initiated his lawsuit, he knew that his claim lacked merit, but nevertheless filed his petition in order to harass and embarrass the defendant and the district court judges of Avoyelles Parish." We conclude that the district court's imposition of sanctions in the amount of \$8,351.39 was not an abuse of discretion.

Finally, the State of Louisiana requests that this court impose sanctions against Segura, pursuant to Federal Rule of Appellate Procedure 38, for filing a frivolous appeal. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." Coghlan v. Starkey, 852 F.2d 806, 811 (5th Cir. 1988). We are particularly cautious in awarding sanctions against pro se litigants. However, even pro se litigants are not allowed to bring a frivolous appeal.

Segura's appeal is frivolous. After the appeal of Segura's claims against Couvillion, Segura should have know that his claims were frivolous. However, he continued to prosecute his case against the State of Louisiana. Moreover, he even appealed the district court's judgment, even though the district court made it known that its ruling was based on the earlier ruling which this court had already upheld. Therefore, we conclude that Segura's appeal of the district court's decision is frivolous, and we award double costs as a sanction.

IV.

For the foregoing reasons, the judgment of the district court is AFFIRMED. Further, because the appeal is frivolous, we assess double costs in sanctions against the appellant.