

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7384
Conference Calendar

GILBERT GONZALES,

Plaintiff-Appellant,

versus

KAY ABDULLAH,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-93-CV-174
- - - - -
(October 28, 1993)

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

PER CURIAM:*

Gilbert Gonzales contends that the district judge erred by dismissing his complaint as frivolous. A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a complaint as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"Unsuccessful medical treatment does not give rise to a § 1983 cause of action. Nor does '[m]ere negligence, neglect or medical malpractice.'" Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991)(citations omitted). The allegations in Gonzales' complaint, if true, and the medical records indicate that Gonzales was treated for his injury and that Dr. Abdullah's attempt to treat Gonzales was unsuccessful. Gonzales alleges nothing more than negligence, at most. Gonzales' complaint therefore lacks basis in law and is frivolous.

AFFIRMED.