IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8453
Conference Calendar

MOSES MACIAS, JR.,

Plaintiff-Appellant,

versus

MATTHEWS & BRANSCOMB and
J. JOE HARRIS,

Defendants-Appellees.

- - - - - - - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-93-CV-347
- - - - - - - - - - -
(November 1, 1993)

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

PER CURIAM:*

Moses Macias, Jr., appeals the district court's dismissal of his civil rights complaint as frivolous. An in forma pauperis complaint may be dismissed by the district court as frivolous if it lacks an arguable basis in law or fact. 28 U.S.C. § 1915(d); Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). We review for abuse of discretion. Denton, 112 S.Ct. at 1734.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

To recover under 42 U.S.C. § 1983, a plaintiff must prove that he was deprived of a federal right and that he was deprived of that right by a person acting under color of law. Daniel v. Ferguson, 839 F.2d 1124, 1128 (5th Cir. 1988). "A state is not responsible for a private party's decisions unless it `has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.'" Daigle v. Opelousas Health Care, Inc., 774 F.2d 1344, 1349 (5th Cir. 1985) (citation omitted).

The defendants are private actors, and Macias has not alleged, either in the district court or to this Court, any facts to the contrary. Therefore, the second element of a section 1983 action is not met, and his conclusional argument concerning the denial of his First and Seventh Amendment rights is meritless.

Macias' arguments concerning diversity jurisdiction are equally unpersuasive. Macias' complaint reveals that the parties are not diverse to each other. See 28 U.S.C. § 1332(a). Moreover, his reliance on Dean v. Dean, 821 F.2d 279 (5th Cir. 1987), is misplaced. Dean is impliedly a case arising under diversity, and it does not create an exception to the statutory requirements for diversity.

The district court did not abuse its discretion in dismissing the complaint as frivolous. See Denton, 112 S.Ct. at 1734. Because Macias has not alleged that the defendants were acting under color of law, and because his complaint does not arise under diversity, this appeal presents no issue of arguable

merit. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Therefore, his appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.