

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

S)))))))))Q

No. 93-8778  
Summary Calendar  
S)))))))))Q

STEVEN B. WADDELL and  
JAMES L. GORECKI,

Plaintiffs-Appellants,

versus

RICHARD A. MUELLER, Regional  
Chief Administrative Law Judge  
and DONNA SHALALA, Secretary of  
Health and Human Services,

Defendants-Appellees.

S)))))))))Q

Appeals from the United States District Court for the  
Western District of Texas  
(SA-93-CA-420)

S)))))))))Q

(August 22, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.\*

PER CURIAM:

Plaintiffs-appellants Steven H. Waddell (Waddell), a  
paralegal, and James L. Gorecki (Gorecki), an attorney, appeal the  
district court's dismissal of their suit against defendants-

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appellees Donna Shalala, Secretary of Health and Human Services (Shalala or the Secretary), and Richard A. Mueller, Regional Chief Administrative Law Judge, Department of Health and Human Services, Social Security Administration (Mueller).

The magistrate judge, whose recommendation the district judge accepted, construed the suit as "a complaint that they were denied attorneys fees at the administrative level for representing" one Eva A. Moreno (Moreno), a social security disability claimant who was ultimately awarded certain disability benefits by the Social Security Administration (SSA) Administrative Law Judge (ALJ), one Edgar L. McHugh (McHugh). Appellants challenge this characterization of their suit, but it appears accurate and they offer no other coherent description or categorization of it.

It is undisputed that Gorecki was never present at any hearing involving Moreno and never entered any appearance as her representative before the SSA. He claims to have "ghost-written" a brief which was filed in the name of Waddell as Moreno's representative before the SSA Appeals Council, following which the Appeals Council remanded to ALJ McHugh, for further hearing, McHugh's initial decision denying benefits. Previous to the remand, Waddell had moved out of state and did not attend the hearing on remand before McHugh, which resulted in the award of benefits, and at that hearing Moreno advised McHugh she did not desire continued representation by Waddell. A subsequent application for fees by Waddell and Gorecki was denied by McHugh, and on appeal the denial was affirmed by Mueller, as Regional Chief Administrative Law Judge. Gorecki and Waddell apparently had

separate contracts with Moreno. Gorecki's provided for fees up to 40% and 50% of recovery and did not provide for approval by the SSA. See 42 U.S.C. § 406(a)(2)(A)(ii) & (b)(1) (fees limited to 25%). Mueller in denying Waddell's appeal noted that at the time of the favorable decision Waddell in effect no longer represented Moreno. As to Gorecki, Mueller concluded that Gorecki had not functioned as Moreno's appointed representative before the SSA.

In the court below, appellants cited no statutory jurisdictional basis for their suit, nor have they on appeal. As the magistrate judge noted, appellants disclaimed suing Shalala and Mueller in any capacity other than their official capacity, so the suit was not one under *Bivens v. Six Unknown Agents*, 91 S.Ct. 1999 (1971). Further, a suit against a federal officer in his official capacity is a suit against the United States, which is immune from suit absent waiver. *Drake v. Panama Canal Comm'n*, 907 F.2d 523, 534 (5th Cir. 1990). Neither here nor below have appellants pointed to any statutory or other waiver of sovereign immunity.

The magistrate judge correctly noted that no statute or regulation provides for judicial review of an SSA decision respecting attorney's fees for services before the SSA. See *Brown v. Sullivan*, 917 F.2d 189, 191 (5th Cir. 1990); *Pittman v. Sullivan*, 911 F.2d 42, 46 (8th Cir. 1990), *cert. denied*, 111 S.Ct. 1307 (1991). Appellants accept this as a correct statement of law. Colorable constitutional claims may arguably provide an exception to this rule. See *Califano v. Sanders*, 97 S.Ct. 980 (1977). The magistrate judge correctly noted, however, that Waddell and Gorecki "have failed to plead with any degree of specificity or clarity

such constitutional claims." Mere conclusional assertions are insufficient to vest jurisdiction. *See Robertson v. Bowers*, 803 F.2d 808, 810 (5th Cir. 1986).

Appellants' brief on appeal fails to demonstrate any reversible error. It does not comply with this Court's rules, containing, for example, only one citation to the record in its thirty-nine pages. The brief merely argues generalities and does not identify particular allegations of specific constitutional violations.

The judgment of the district court is

AFFIRMED.