

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10350  
Conference Calendar

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BURNICE JOE BIRDO,

Plaintiff-Appellant,

versus

LOLA M. ASHMEAD ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:92-CV-313

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(September 23, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Burnice Joe Birdo appeals from an order of the magistrate judge imposing monetary sanctions and prohibiting the filing of any pleadings until the sanctions have been paid unless leave to file is granted. He argues that he is not an abuser of the judicial process and that he was given no warning of impending sanctions. Birdo contends that he merely did what he was ordered to do and that he submitted the supplemental complaint that became the basis of the sanctions before this Court's remand.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Rule 11, as amended, provides that if a court determines that a paper is signed in violation of the rule, "the court may . . . impose an appropriate sanction . . . ." Fed. R. Civ. P. 11. This Court reviews a district court's decision to invoke Rule 11 under an abuse of discretion standard." See Thomas v. Capital Sec. Serv., Inc., 836 F.2d 866, 869 (5th Cir. 1988) (en banc); see also Knipe v. Skinner, 19 F.3d 72, 78 (2nd Cir. 1994) (under the amended version of Rule 11, whether to impose sanctions is within the discretion of the district court).

In a prior appeal from the dismissal of Birdo's civil rights action, we remanded for the magistrate judge either to permit Birdo to file a supplemental complaint or to incorporate a previously filed amended complaint in the record. We warned Birdo that he could be sanctioned if his supplemental complaint contained essentially the same issues. The magistrate judge considered his previously filed amended complaint and correctly found that Birdo raised virtually the same three frivolous claims in his supplemental complaint that he had raised in his original complaint. Birdo does not argue on appeal that the supplemental complaint included new or different issues. Nor did he attempt to amend or withdraw the complaint after receiving this Court's warning. His later advocacy on remand of the previously submitted pleading violated Rule 11. See Fed. R. Civ. P. 11(b). There is no abuse of discretion. See Thomas, 836 F.2d at 873.

AFFIRMED.