

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10365  
Conference Calendar

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FREDDY J. CORK,

Plaintiff-Appellant,

versus

DON ADDINGTON ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:94-CV-54-C  
- - - - -  
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Freddy J. Cork, a Texas prisoner, commenced this 42 U.S.C. § 1983 action against a number of employees of the Lubbock County Jail, alleging that while he was incarcerated in Lubbock County, in violation of the applicable rules and regulations, jail personnel mishandled two money orders, one for five dollars and one for forty dollars, that were mailed to him by persons from outside the jail. Cork alleged that the money orders were delivered to other inmates and that jail personnel resisted his efforts to have the money orders returned to the original sender

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

or credited to his inmate account. Cork asserted that these actions violated his Fourteenth Amendment rights to due process and equal protection. The district court dismissed the complaint as frivolous, pursuant to 28 U.S.C. § 1915(d). We affirm.

Cork argues that the district court erred by dismissing his complaint as frivolous because it states a claim for loss of property through theft or negligence. A complaint may be dismissed as frivolous under § 1915(d) if it has no arguable basis in law or in fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This Court reviews such a dismissal for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

An intentional deprivation of property through the random and unauthorized act of a state employee is not actionable under § 1983 when an adequate state post-deprivation remedy exists. Zinermon v. Burch, 494 U.S. 113, 128-30, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). Likewise, a negligent act causing an unintended loss of property does not violate due process. Lewis v. Woods, 848 F.2d 649, 652 (5th Cir. 1988). Cork has a right of action under Texas law for the alleged negligent or intentional deprivation of property. See, e.g., Engelking v. Watters, No. 93-8294, slip op. at 8 (5th Cir. Apr. 13, 1994) (unpublished) (intentional taking); Thompson v. Steele, 709 F.2d 381, 383 (5th Cir.) (negligent act), cert. denied, 464 U.S. 897 (1983). Accordingly, the district court correctly dismissed the complaint as frivolous because it lacks an arguable basis in law.

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AFFIRMED.