

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-10696
Summary Calendar

MARLON EUGENE BAILEY,

Plaintiff-Appellant,

versus

THE CITY OF AMARILLO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

(2:94-CV-2)

(January 24, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This is an appeal from the District Court's dismissal of an in forma pauperis complaint filed by a state prisoner. We AFFIRM.

Marlon Eugene Bailey filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against the City of Amarillo, Texas; City of Amarillo Police Officer Shawn McLeland; and City of Amarillo Police Chief Jerry Neal. Bailey alleged that Officer McLeland used excessive force when he shot Bailey and that Chief Neal was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

consciously indifferent and negligent in failing to properly train and instruct McLeland in "proper use of force policies."

The district court entered an order to show cause why Bailey should not be sanctioned because his civil rights complaint was identical, with the exception of the addition of Chief Neal as a defendant, to Bailey's previously filed civil rights complaint that was adjudicated on its merits. Summary judgment was granted in favor of the defendants in the previous action, which arose from the identical shooting incident. In his response to the district court's order to show cause, Bailey restated the allegations in his complaint and added that his complaint was "not to harass, disrupt, or otherwise burden the Court or the defendants."

The magistrate judge recommended that Bailey's complaint (Cause no. 2:94-CV-002) be dismissed as malicious pursuant to 28 U.S.C. § 1915(d) because it was identical to his previously filed complaint (Cause no. 2:90-0052), with the exception of the addition of defendant Neal. The docket sheet indicated that the report and recommendation of the magistrate judge that was sent to Bailey was returned marked "Return to sender, Refused, Not here." After an independent examination of the record, the district court adopted the report and recommendation of the magistrate judge, noting that no objections had been filed to such report and recommendation, and dismissed Bailey's complaint. Bailey filed a timely notice of appeal.

Section 1915(d) provides for the dismissal of IFP cases if the court is "satisfied that the action is frivolous or malicious."

"[I]n forma pauperis complaints may be dismissed as frivolous if they seek to relitigate claims that allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the plaintiff." Pittman v. Moore, 980 F.2d 994, 994 (5th Cir. 1993) (citing Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969 (1989)). It is "malicious" for a pauper to file a lawsuit that is duplicative of prior federal court litigation. Id. at 995.

In his appellate brief, Bailey restates the allegations in his complaint, arguing that Officer McLeland used excessive force and that Chief Neal was negligent in failing to properly train and instruct McLeland. Bailey does not address the district court's dismissal of his complaint as duplicative.

Although this Court liberally construes the briefs of pro se appellants, arguments must be briefed to be preserved. Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). Generally, claims not argued in the body of the brief are abandoned on appeal, even if the appellant is proceeding pro se. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Because Bailey does not address the district court's dismissal of his complaint pursuant to § 1915(d) as duplicative and malicious, he has abandoned the sole issue upon which the trial court's judgment was based and his appeal accordingly fails. Thus, this Court AFFIRMS the district court's decision.