

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10749
(Summary Calendar)

BILL STEPHENS,

Plaintiff-Appellant,

versus

JUDGE DARRELL R. CAREY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(2:93-CV-350)

(November 21, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

In this appeal of the dismissal of his complaint under 42 U.S.C. § 1983, Plaintiff-Appellant Bill Stephens, proceeding pro se and in forma pauperis (IFP), takes issue with the district

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court's dismissal of his action as frivolous, pursuant to 28 U.S.C. § 1915(d). For the reasons set forth below, we find no reversible error in the rulings of the district court and therefore affirm.

I

FACTS AND PROCEEDINGS

Stephens filed his civil rights complaint against County Court at Law Judge Darrell R. Carey (Judge Carey), Randall County (Texas) District Attorney Randy Sherrod (D.A. Sherrod), and the Sheriff of Randall County, Texas (Sheriff Hooks), (collectively, Appellees), alleging that those three officials conspired to retaliate against him because he filed a multi-million dollar federal lawsuit against them. In the instant case, Stephens alleged that after he was arrested and while he was being held in the Memphis (Texas) jail pursuant to a warrant issued by Randall County, the Appellees SO knowing that Stephens required medical treatment which was unavailable in the Memphis jail SO conspired to manipulate the bail process to keep him incarcerated. He also alleged that he was denied adequate medical care at both the Memphis and Randall County jails.

Subsequently, Stephens filed a motion to amend his complaint to delete all individual defendants and substitute Randall County as the only defendant. The federal magistrate judge ordered Stephens to file an amended complaint naming the appropriate defendants and indicating how each named defendant had violated Stephens' constitutional rights. He did so, naming Randall County, or, alternatively, Judge Carey, D.A. Sherrod and Sheriff Hooks, as

defendants. Stephens alleged that he had an arrest warrant improperly issued against him by D.A. Sherrod; that Judge Carey and D.A. Sherrod conspired to manipulate the bail process to prevent Stephens from receiving medical treatment; that Sheriff Hooks continued the conspiracy by denying Stephens medical treatment while he was in jail; and that as a result Stephens was denied medical treatment in both the Memphis and Randall County jails. The district court dismissed the complaint as frivolous under § 1915(d), and Stephens timely appealed.

II

ANALYSIS

A complaint filed IFP may be dismissed by the court sua sponte if the complaint is found to be frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). We review the district court's dismissal of an IFP complaint under § 1915(d) for abuse of discretion. Id. We now address Stephens' claims seriatim.

A. Liability of Randall County

It is unclear from Stephens' brief if on appeal he is challenging the dismissal of his claims against Randall County. To the extent that an issue is not briefed, it is abandoned. See Evans v. City of Marlin, Tex., 986 F.2d 104, 106 n.1 (5th Cir. 1993). To the extent that Stephens may here be considered to be challenging the dismissal of the claims against Randall County,

such a challenge would be wholly without merit. As we find no abuse of discretion here, we affirm the dismissal of Randall County as a defendant.

B. Judicial and Prosecutorial Immunity

Stephens argues that his constitutional rights were violated by D.A. Sherrod when he sought an arrest warrant against Stephens and when he manipulated the bail process. But Sherrod is entitled to absolute immunity for any actions taken in initiating and carrying Stephens' case through the judicial process. See Young v. Biggers, 938 F.2d 565, 569 (5th Cir. 1991). Clearly, the decision of the district attorney to seek an arrest warrant and to request bail are prosecutorial functions. Similarly, Judge Carey is entitled to absolute immunity for all actions taken in connection with the judicial proceedings in Stephens' case. See McAfee v. 5th Circuit Judges, 884 F.2d 221, 222 (5th Cir. 1989), cert. denied, 493 U.S. 1083 (1990) (judges are absolutely immune for damages from acts performed in their judicial capacity, even if the acts are alleged to have been done maliciously or corruptly). Even when we cut Stephens the proverbial slack accorded pro se IFP plaintiffs and construe his inartful lay writings as liberally as practicable in his favor, all allegations made against Judge Carey and D.A. Sherrod relate respectively to their judicial and prosecutorial functions: seeking an arrest warrant and dealing with matters affecting bail. Under these circumstances the district court did not abuse its discretion in dismissing Stephens' claims against Judge Carey and D.A. Sherrod.

C. Denial of Adequate Medical Care - Sheriff Hooks

As Stephens' appellate brief consists primarily of a copy of his amended complaint, it is difficult to determine the precise nature of his arguments. He appears, however, to be arguing that he was denied adequate medical care¹ while housed in the Randall County jail.² Under the Fourteenth Amendment, pretrial detainees of a state or one of its subdivisions "must be provided with reasonable medical care, unless the failure to supply it is reasonably related to a legitimate government objective." Rhyne v. Henderson County, 973 F.2d 386, 391 (5th Cir. 1992) (internal quotations and citations omitted).

The documents submitted by Stephens indicate that as of 1989 he suffered Lyme disease and hyperthyroidism. Stephens also alleged that he informed jail personnel, including the jail doctor, that he suffers from a neurological disorder, that he was hemorrhaging, and that he required a vegetarian diet for colon cancer; but that jail personnel refused to give him the necessary medical treatment. He further alleged that he did not receive his

¹The district court applied the Eighth Amendment standard of deliberate indifference to Stephens' denial-of-medical-care claim. It appears from the pleadings, however, that Stephens was a pre-trial detainee and not a convicted prisoner: The arrest warrant was issued because Stephens failed to make a docket call. Although the standard under both amendments, as developed through recent jurisprudence, are now essentially identical, the Fourteenth Amendment, and not the Eighth, is the proper source of the constitutional right of a pre-trial detainee.

²Although Stephens alleges that he was denied medical treatment while housed in the Memphis jail, he did not name any Memphis jail personnel as defendants and has made his medical care and treatment arguments to this court only as to the Randall County jail.

medication until the day he was released.

Even construing Stephens' allegations as liberally as we may, we are left with the distinct impression that all fall into either one or both of two categories: purely conclusionary; or fanciful and delusional. We do not think that the district court abused its discretion when it dismissed Stephens' denial-of-medical-care claims as frivolous under § 1915(d), although we concede that, among all of his claims, denial of medical care comes the closest to reaching the minimal required basis in fact or law to avoid dismissal as frivolous. Unfortunately for Stephens, however, even when thus construed his medical care allegations and arguments fall short of that mark. The district court's dismissal of Stephens' inadequate medical care claims was not an abuse of discretion and must, therefore, be affirmed.

D. Conspiracy

Stephens also argues that Judge Carey, D.A. Sherrod, and Sheriff Hooks conspired to deny his constitutional rights. To establish a § 1983 conspiracy claim, a plaintiff must allege the existence of a conspiracy involving state action and a deprivation of civil rights in furtherance of the conspiracy. Pfannstiel v. City of Marion, 918 F.2d 1178, 1187 (5th Cir. 1990). Stephens cannot rely on conclusional allegations to establish a conspiracy, but rather must allege material facts to support his claim. McAfee, 884 F.2d at 222 (5th Cir. 1989), cert. denied, 493 U.S. 1083 (1990). For the same reasons discussed in section B. above, Judge Carey and D.A. Sherrod are absolutely immune from the conspiracy

charge just as they are from the substantive charge. Moreover, as we have found insufficient the allegations made by Stephens in connection with denial of medical care, the conspiracy claims against Sheriff Hooks must fail as well. The district court's dismissal of Stephens' conspiracy charges against the three individual state defendants is free of abuse of discretion and thus is affirmed.

E. Judicial Bias

Finally, Stephens makes a conclusional contention that the federal district judge and the federal magistrate judge who conducted his case in district court are biased against him. Adverse rulings against a litigant do not support charges of bias or prejudice. See Liteky v. United States, ___ U.S. ___, 114 S.Ct. 1147, 1157-58, 127 L.Ed.2d 474 (1994) (judicial rulings and opinions formed during judicial proceedings cannot be the basis of a bias or partiality motion unless they display deep-seated favoritism or antagonism). In addition to being purely conclusional, Stephens' charges against the federal judges concern acts or omissions occurring during judicial proceedings and therefore have no merit.

III

CONCLUSION

For the foregoing reasons, the district court's affirmance of the district court's dismissal of Stephens' claims as frivolous, pursuant to § 1915(d), is
AFFIRMED.