

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10899

BENARD M. CLARK,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:94-CV-60-C)

(April 4, 1995)

Before HIGGINBOTHAM, SMITH, and STEWART, Circuit Judges.

HIGGINBOTHAM, Circuit Judge:*

Inmate Benard M. Clark appeals the district court's dismissal of his 42 U.S.C. § 1983 action. We affirm.

Clark filed this action against various defendants, alleging use of excessive force, inadequate medical treatment, lack of due process in a disciplinary hearing, and retaliation for his engagement in civil rights activities. Upon reviewing his in forma pauperis petition, the district court permitted him to file his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pleadings without prepayment of costs, but withheld service of process until it could determine whether his complaint was frivolous under 28 U.S.C. § 1915(d).

A magistrate judge recommended dismissing as frivolous all but his excessive force and retaliation claims. The magistrate judge also recommended that Clark be ordered to replead his retaliation claim with more specificity.

Before the district court acted on these recommendations, it learned that another federal court had ordered Clark to pay a \$50 fine before filing any more civil rights actions in forma pauperis. The district court below issued an order to show cause why his case should not be dismissed for failure to pay that fine.

The order to show cause demanded a response by September 2, 1994. On September 10, 1994, the court still had not received any response from Clark, and it entered an order dismissing his case. On September 21, 1994, Clark filed an affidavit stating that he did not receive the court's order to show cause until September 13. In his tardy response to the order to show cause, which he filed on September 29, Clark stated that he lacked the funds to pay the \$50 fine. Neither defendants nor the district court responded to this affidavit. Clark filed this appeal on September 29, 1994.

The district court followed the Northern District of Texas' Miscellaneous Order No. 48, which permits "each federal district court in Texas [to] honor the sanctions imposed by another federal court in Texas." Having reviewed the original order imposing sanctions, we agree that it is well worth honoring.

In that case, Clark v. Brown, No. 92-1321 (S.D. Tex. May 20, 1992), Clark had filed an action under § 1983 and sought leave to proceed in forma pauperis. The district court denied leave to proceed in forma pauperis and dismissed the action under 28 U.S.C. § 1915(d) as frivolous. The court rejected his action on several grounds, each of them dispositive: his claim was barred by the applicable statute of limitations, he sought damages from a defendant on the basis of supervisory liability alone, he had adequate post-deprivation remedies and therefore could not establish his constitutional due process claim, and -- most importantly -- his action was identical to a claim he had brought four years ago, a claim which the court had dismissed as frivolous. The court noted that he had also filed two other civil rights actions, which had both been dismissed as frivolous. The court assessed a \$50 sanction for filing the duplicative and frivolous lawsuit. It enforced that sanction by directing the Clerk of Court to refuse to accept from Clark any civil rights actions for filing in forma pauperis until Clark paid his sanction. Clark never appealed. The court below properly respected that order.

We are unpersuaded by Clark's allegation that he cannot pay the \$50 fine. This court has upheld far larger fines than this. See, e.g., Mayfield v. Klevenhagen, 941 F.2d 346, 349 (5th Cir. 1991) (upholding \$300 and \$400 sanctions imposed upon a frivolous filer, and forbidding filing of any appeal in forma pauperis until sanctions were paid); see also Gelabert v. Lynaugh, 894 F.2d 746 (5th Cir. 1990) (per curiam) (upholding order requiring Gelabert,

a "recreational litigator," to pay a \$10 fine before filing any further actions, and rejecting argument that Gelabert could not pay the sanction).

Accordingly, we AFFIRM.