

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-11117  
Conference Calendar

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JAMES HENRY HERRING,

Plaintiff-Appellant,

versus

CONNIE MAYFIELD, Judge,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:94-CV-2437-R

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(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

James Henry Herring argues that Judge Mayfield "was in clear absence of jurisdiction" by setting his bond after thirty-eight days. A complaint filed in forma pauperis (IFP) may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or in fact. Booker v. Koonce, 2 F.3d 114, 115 (5th Cir. 1993). This court reviews a § 1915(d) dismissal for an abuse of discretion. Id.

Judicial officers are entitled to absolute immunity from damages in § 1983 actions arising out of acts performed in the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993).

Absolute judicial immunity extends to all judicial acts that are not performed in the clear absence of all jurisdiction. Thus, a judge has no immunity (1) for actions taken outside of his judicial capacity, or (2) for actions that are judicial in nature, but occur in the complete absence of all jurisdiction.

Malina v. Gonzales, 994 F.2d 1121, 1124 (5th Cir. 1993)

(citations omitted).

Except in the clear absence of jurisdiction, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Id. at 356.

Herring's allegations against Judge Mayfield are based upon Judge Mayfield's actions in conducting a bond hearing and setting the amount of the bond, which is within the scope of her jurisdiction, thus affording her absolute judicial immunity. Herring has not demonstrated that Judge Mayfield acted in the clear absence of all jurisdiction. Herring's claim is based upon an indisputably meritless legal theory and was thus properly dismissed with prejudice. See Booker, 2 F.3d at 115. The district court did not abuse its discretion by dismissing Herring's complaint pursuant to § 1915(d).

AFFIRMED.