IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11153
(Summary Calendar)

ANTHONY STRIBLING,

Plaintiff-Appellant,

versus

STATE OF TEXAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:94-CV-2276-G)

(April 12, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant Anthony Stribling, a Texas state prisoner proceeding pro se and in forma pauperis, sued the State of Texas, a state judge and a doctor, claiming under 42 U.S.C. § 1983 that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

his civil rights had been abridged. On appeal he urges us to reverse the district court's dismissal of his complaint as frivolous, pursuant to 28 U.S.C. § 1915(d), also complaining that the district court erred in failing to hold an evidentiary hearing on the claims. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

Stribling sued the State of Texas, Judge Michael J. O'Neill, a state court judge, and Peggy Joyce Whalley, a physician who testified at Stribling's criminal trial. He alleged that his civil rights were violated by Judge O'Neill who denied Stribling's motion to reinstate a state tort suit in which he alleged that during his criminal trial Dr. Whalley committed perjury. Judge O'Neill had dismissed the state tort suit for want of prosecution after Stribling failed to serve Dr. Whalley. The judge denied Stribling's motion to reinstate upon determining that the statute of limitations barred the action.

In the instant civil rights complaint, Stribling alleged that Judge O'Neill should have reinstated the suit against Dr. Whalley by applying the doctrine of equitable tolling. Stribling argued that he was unable timely to serve Dr. Whalley because her name was misrepresented by the court reporter in the trial transcript as "Peggy Wally." Stribling sought $75,000 in punitive damages, $75,000 for mental anguish, and a declaratory judgment.

The magistrate judge, in recommending that Stribling's civil rights complaint be dismissed as frivolous, reasoned that the State

of Texas was absolutely immune from a damages suit under the Eleventh Amendment and that Judge O'Neill also was absolutely immune from suit. The magistrate judge determined that Stribling's failure to allege a causal connection between Dr. Whalley's conduct and the unfavorable disposition of Stribling's state court action made his civil rights claim against Dr. Whalley frivolous. The magistrate judge also noted that to the extent that Stribling was attempting to reassert his state tort claims against Dr. Whalley, the claims were barred by res judicata: Stribling had asserted the same claims in a previous federal civil rights action which had been dismissed as frivolous. The district court adopted the magistrate judge's report and recommendation and dismissed the complaint as frivolous pursuant to § 1915(d). This appeal ensued.

II

ANALYSIS

A § 1983 action that is dismissed under § 1915(d) is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). A complaint is frivolous if it has no arguable basis in fact and law. Id.

Stribling alleges that the state court conspired to conceal the correct spelling of Dr. Whalley's name. He contends that the State of Texas "knowingly and intentionally" misspelled Dr. Whalley's name and that the prosecutors conspired to conceal her name. Stribling has filed with us an instrument entitled "Appellant's Request for Judicial Notice of Adjudicative Facts" in which he urges that the state court should have reinstated his tort

suit because the court lacked jurisdiction when the suit originally was filed.

Although on appeal Stribling lists as an issue his contention that the district court erred in dismissing his complaint, in the body of his brief he argues only the merits of his complaint. Federal Rule of Appellate Procedure 28(a)(4) requires that the appellant's argument contain the reasons why he deserves the requested relief, together with citation to the authorities, statutes, and parts of the record relied on. Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993). Although we liberally construe pro se briefs, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), we nevertheless require arguments to be briefed in order to be preserved. Yohey, 985 F.2d at 225. Claims not adequately argued in the body of the brief are deemed abandoned on the appeal. See id. General arguments giving only broad standards of review and not citing to specific errors are insufficient to preserve issues for appeal. See Brinkmann v. Dallas Cty. Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Stribling's failure to address the reasons why the district court dismissed his complaint allows us to determine that Stribling has abandoned the only issue "arguably presented to [this court] for review," i.e., the dismissal of his complaint as frivolous for the reasons given by the district court. See Searcy v. Houston Lighting & Power Co., 907 F.2d 562, 564 (5th Cir.), cert. denied, 498 U.S. 970 (1990).

In any event, the district court did not abuse its discretion in dismissing Stribling's civil rights complaint as frivolous under

§ 1915(d). We agree with that court's determination that the State of Texas was absolutely immune from suit under the Eleventh Amendment, which confers absolute immunity on an unconsenting state from suits brought in federal court by the state's own citizens. Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 113 S. Ct. 684, 687 (1993). The same is true for Judge O'Neill. He was acting within the scope of his official duties and was entitled to absolute immunity from damage claims. See Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991). Dr. Whalley, in her capacity as a witness in Stribling's criminal trial, was absolutely immune from § 1983 damage claims even if the allegation was that she perjured herself at his trial. Briscoe v. LaHue, 460 U.S. 325, 341-46 (1983); see Matter of Jones, 966 F.2d 169, 172 (5th Cir. 1992) (this court can affirm on any ground supported by the record). The district court did not abuse its discretion in dismissing the complaint under § 1915(d).

Stribling has also filed a document with us entitled "Appellant's Notation to the Court" in which he argues that the district court erred in failing to review his objections to the magistrate judge's report. Whether or not the district court considered Stribling's objections is unclear. The objections appear to have been filed timely, and as a general rule a district court errs if it does not consider timely-filed objections to a magistrate judge's report and recommendation. See 28 U.S.C. § 636(b)(1)(C); Smith v. Collins, 964 F.2d 483, 485 (5th Cir. 1992). Nevertheless, a district court's error in failing to

consider such objections can be harmless. See Smith, 964 F.2d at 485. As Stribling's objections are wholly lacking in merit, the district court's error, if any, was harmless.

Stribling also lists in his statement of issues on appeal the alleged error of the district court in failing to hold a Spears[1] hearing to determine the merits of his claim. As Stribling has failed to brief this issue, we deem it too to have been abandoned. Yohey, 985 F.2d at 225. We nevertheless observe in passing that here the district court did dismiss Stribling's complaint as frivolous without holding a Spears hearing or requiring Stribling to fill out a questionnaire. In Eason v. Thaler, 14 F.3d 8, 10 (5th Cir. 1994), we noted that § 1915(d) dismissal was inappropriate if, with additional factual development, the "allegations may pass section 1915(d) muster." In the instant case, however, it is clear that even with additional factual development Stribling's allegations would remain frivolous. Thus, it was not error for the district court to dismiss the complaint without holding a Spears hearing.

The district court's dismissal of Stribling's civil rights complaint as frivolous, without holding a Spears hearing, is AFFIRMED.

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[1] Spears v. McCotter, 766 F.2d 179, 181-82 (5th Cir. 1985).