

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30505
Conference Calendar

SIDNEY MARTS,

Plaintiff-Appellant,

versus

TIMES PICAYUNE PUBLISHING CO.
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-94-2188-C
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

A complaint filed in forma pauperis (IFP) can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___U.S.___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989)). This Court reviews a § 1915(d) dismissal for abuse of discretion. Denton, 112 S. Ct. at 1734.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

To obtain relief under 42 U.S.C. § 1983, a plaintiff must prove that he was deprived of a federal constitutional or statutory right and that the persons depriving him of that right acted under color of state law. Hernandez v. Maxwell, 905 F.2d 94, 95 (5th Cir. 1990). Sidney Marts contends that the Times Picayune Publishing Co. (Times-Picayune) is either a state actor or acts under color of state law because it is a licensed corporation that operates under the color of state law and that the Times-Picayune and its employees are licensed by state law for polling purposes. However, Marts misunderstands the meaning of the term "under color of state law." A private entity does not become a state actor because it holds a license granted by the state. Gipson v. Rosenberg, 797 F.2d 224, 225 (5th Cir. 1986), cert. denied, 481 U.S. 1007 (1987). Additionally, private parties are generally considered to act under color of law only in certain circumstances, such as when that party is involved in a conspiracy or participates in joint activity with state actors. Adickes v. S.H. Kress & Co., 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Hobbs v. Hawkins, 968 F.2d 471, 480 (5th Cir. 1992). Marts does not allege any joint activity or conspiracy between the private defendants and any state actors. Because his allegations indicate that the defendants did not act under color of state law, his complaint lacks an arguable basis in law and in fact.

AFFIRMED.