

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40133
Summary Calendar

ELTON DEVILLE,

Plaintiff-Appellant,

versus

DOUGLAS J. NEHRBASS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(6:93-CV-1594)

(September 29, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The district court dismissed this case for lack of subject matter jurisdiction. We affirm the dismissal because Deville's claim is frivolous pursuant to 28 U.S.C. § 1915(d).

Appellant Elton Deville filed a civil rights action alleging that a state-court judge and several attorneys conspired against him by falsifying a judgment in a state civil action in the 15th Judicial District Court, Parish of Acadia, Louisiana (Docket

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

No. 64654-B). The underlying case concerned damage to his new automobile due to alleged negligence on the part of an employee of Falco Lime, Inc. (Falco). Deville filed the suit to recover damages against Falco, The Home Insurance Company, Louisiana Motors, Inc., and State Farm Mutual Automobile Insurance Company.

The defendants in the present action are Judge Douglas J. Nehrbass, the presiding judge in the state case; Gina Rush Calogero, the attorney for Louisiana Motors; Thomas A. Budetti, who represented State Farm; and Paul H. F. Baker, counsel for Falco and Home.

Deville argues that the district court erred in dismissing the action for lack of subject matter jurisdiction. We agree. His complaint can be liberally construed to allege a conspiracy among the judge and the attorneys to interfere with his civil rights. In his opposition to the defendants' motions to dismiss, Deville explicitly stated that he was invoking jurisdiction pursuant to 42 U.S.C. § 1985.

Nonetheless, Deville's constitutional claim is facially frivolous. Assuming that Deville alleged a conspiracy to obstruct justice in state court under § 1985(2), "[a]n allegation that the defendants are motivated by some class based discrimination is essential to the maintenance of a suit. . . ." Ryland v. Shapiro, 708 F.2d 967, 973 n.7 (5th Cir. 1983). Deville has not alleged such discrimination.

Even if Deville sought to maintain an action for conspiracy under § 1983, his claim fails. "To support his conspiracy claims, [Deville] must allege facts that suggest: 1) an agreement between the private and public defendants to commit an illegal act and 2) an actual deprivation of constitutional rights." Cinel v. Connick, 15 F.3d 1338, 1343 (5th Cir. 1994) (citations omitted). Succinctly, he alleged that the defendants conspired with Judge Nehrbass to render a "falsified judgment granting Louisiana Motors' motion for summary judgment after setting the case for trial and deferring a ruling on the remaining motions." Deville advanced only the conspiracy claim itself unsupported by factual allegations. Therefore, his assertions do not support a conspiracy claim under § 1983.

Further proceedings to develop the facts are unwarranted. Deville's claims are extensively set forth in his motion in opposition to Calogero's motion for summary judgment and/or motion to dismiss. Deville's allegations concerning the trial judge's involvement in a conspiracy with the attorneys to deprive him of a jury and to grant summary judgment in favor of the defendants, "rise to the level of the irrational or the wholly incredible." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992) (citations omitted). Moreover, Deville is seeking a review of the state court decision under the guise of a § 1983 action. This he may not do. See Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986) (plaintiff may not use § 1983 to challenge a state court judgment).

Because Deville's complaint is facially frivolous, it was properly dismissed under 28 U.S.C. § 1915(d). The defendants' motions to dismiss are denied as unnecessary. If Deville files any more frivolous appeals in this court, he may be subject to sanctions. FRAP 38.

AFFIRMED; motions denied.