

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40322

(Summary Calendar)

ARTHUR X. CARSON,

Plaintiff-Appellant,

versus

T. DENBY, Property Officer,
Stiles Unit TDCJ-ID, Et Al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Eastern District of Texas
(1:93-CV-470)

(July 19, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Arthur X. Carson, a state prisoner, appeals the district court's dismissal of his civil rights action as frivolous, under 28 U.S.C. § 1915(d) (1988). We reverse and remand.

I

Carson brought suit under 42 U.S.C. § 1983 (1988) against officers Denby and Hempsteadt, claiming retaliation for his use of the prison grievance system, and interference with his right of

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

access to the courts. Carson alleged in his complaint that T. Denby, the prison's property officer, confiscated and temporarily withheld "legal documents needed to prepare objections to the magistrate's report and recommendations due in [his] habeas corpus case," which "circumvented [him] from obtaining a de novo review by the district court in [the habeas corpus] matter, and affected [his] ability to appeal the recommendations made therein."¹ Carson alleged that Denby confiscated and withheld his property in retaliation for grievances which he had filed against her. After filing his complaint, Carson moved for a temporary restraining order, alleging that Denby had again confiscated his personal legal materials, as a result of which he "could not respond to a contest of [his] pauper status in a state court proceeding."

The case was referred to a magistrate judge, who recommended dismissal of Carson's in forma pauperis action as frivolous, pursuant to 28 U.S.C. § 1915(d), and also recommended a \$20 fine as a sanction for filing frivolous litigation. Carson objected to the magistrate's report and recommendation. In his objections, Carson sought to amend and supplement his pleadings, objected to the recommendation of a \$20 fine, and repeated his allegation that Denby had confiscated his materials a second time since the filing of this action.

¹ The magistrate in this case indicated that Carson received the report and recommendations in his habeas case on September 2, 1993, and that Carson did not respond to the report "through September 29, 1993." Carson does not dispute these findings, and he alleges that he was deprived of his legal materials only from September 9 to September 17. Thus, assuming that Carson's allegations are true, there were at least 19 days in September when Carson had access to his legal materials.

The district court, observing that Carson had not received a previous warning about filing frivolous suits, warned Carson rather than imposing the \$20 fine. The district court dismissed with prejudice Carson's claims of denial of access to the courts, holding that those claims were frivolous because Carson "failed to demonstrate he was denied access to the courts by the alleged withholding of his property." The district court reasoned that Carson "had adequate time and resources available in which he could have submitted objections in" his habeas corpus action. Concerning the claim that Carson was prevented from litigating his pauper status in a state court proceeding, the district court observed that Carson "submitted . . . objections" to the magistrate judge's report and recommendation in this case "with extensive legal citations during a time period he alleges his legal material is being withheld from him." Therefore, the district court concluded, Carson "failed to support his claim of being denied access to the courts with any harm." The district court dismissed Carson's retaliation claims with prejudice, finding that they were frivolous because they were "conclusory" and "unsupported with any specific details," and because the alleged retaliation did not result in a denial of access to the courts.²

Carson appeals, arguing that the district court abused its discretion by dismissing his claims of retaliation and of

² The district court also held that Carson's claim of deprivation of his property without due process of law was frivolous, because Carson had an adequate postdeprivation remedy under state law. On appeal Carson does not challenge that holding.

intentional interference with his right of access to the courts. Carson also argues that the district court erred by refusing to allow him to amend and supplement his complaint. Finally, Carson contends that the magistrate judge and the district court displayed bias against him by refusing to construe his pro se complaint liberally.³

II

A

Carson argues the district court erred by dismissing his claims that Denby intentionally interfered with his right of access to the courts. In *Jackson v. Procunier*, 789 F.2d 307 (5th Cir. 1986), we stated that "interference with access to the courts may constitute the deprivation of a substantive constitutional right . . . and may give rise to a claim for relief under § 1983. Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation." *Id.* at 310-11. However, a district court may dismiss an in forma pauperis proceeding when the court is satisfied that the action is frivolous, 28 U.S.C. § 1915(d), and we will disturb the district court's dismissal only upon finding an abuse of discretion. *Denton v. Hernandez*, ___U.S. ___, ___, 112 S. Ct. 1728, 1734, 118 L. Ed. 2d 340 (1992).

The district court found that Carson's denial-of-access-to-the-courts claims were frivolous because Carson's factual allegations lacked credibility. Carson alleged that Denby

³ Carson does not argue that the district court erred by dismissing his claims against officer Hempsteadt.

prevented him from objecting to the magistrate's report and recommendation in his habeas case, but the district court disagreed, finding that Carson "had adequate time and resources available in which he could have submitted objections." The district court also disagreed with Carson's allegation that he was prevented from litigating the issue of his pauper status in his state court action. Because Carson filed objections to the magistrate's report and recommendation in this case, complete with legal citations, the district court reasoned that Carson could have litigated the issue of his pauper status in the state court case as well.

The district court abused its discretion, because its stated reasons will not support dismissal of a claim as frivolous under 28 U.S.C. § 1915(d). The "§ 1915(d) frivolousness determination . . . cannot serve as a factfinding process for the resolution of disputed facts." *Denton*, ___ U.S. at ___, 112 S. Ct. at 1733.

[A] court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," a category encompassing allegations that are "fanciful," "fantastic," and "delusional." As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely.

Id. (citations to *Neitzke v. Williams*, 490 U.S. 319, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989) omitted).

Carson's allegation that Denby prevented him from litigating his other cases is neither irrational nor wholly incredible. Although Carson had access to his legal materials for about 19 days

during September, when he needed to file objections to the magistrate's report and recommendation in his habeas case,⁴ a question of fact remains as to whether deprivation of his legal materials for nine days prevented him from filing those objections. Furthermore, the fact that Carson filed objections in this case, complete with legal citations, while he was allegedly deprived of his legal materials, contradicts Carson's assertion that he was contemporaneously prevented from litigating his pauper status in state court; but that conflict in the evidence does not render Carson's allegation irrational or wholly incredible. The district court abused its discretion by holding that Carson's claims were frivolous, based on its resolution of disputed facts.

B

Carson also alleges that the district court abused its discretion by dismissing his retaliation claim as frivolous. A court does not abuse its discretion in dismissing an in forma pauperis case where the facts alleged are "fantastic or delusional scenarios" or the legal theory advanced by the plaintiff is "indisputably meritless." *Neitzke*, 490 U.S. at 327-28, 109 S. Ct. at 1833. However, Carson's allegations are not fantastic or delusional. Carson simply alleged that the prison's property officer confiscated his legal materials on two separate occasions in retaliation for grievances he filed against her. Neither is the legal theory advanced by Carson "indisputably meritless," since prisoners may have a protected liberty interest in prison grievance

⁴ See *supra* note 1.

procedures. See *Jackson v. Cain*, 864 F.2d 1235, 1249 (5th Cir. 1989) (prisoner alleging prison officials changed his work assignment in retaliation for his use of grievance system stated facially valid claim precluding summary judgment in civil rights case).

However, the district court reasoned that Carson's retaliation claim failed because he was not denied access to the courts.⁵ We disagree. Carson's retaliation claim was not precluded merely because he remained capable of litigating his other cases. What is important is whether Denby retaliated against Carson for exercising his protected right of access to the prison's grievance system.

The district court also dismissed Carson's retaliation claims because they were "conclusory" and "unsupported with any specific details." This was error, because Carson should have been afforded "an opportunity . . . to offer a more detailed set of factual claims" before his complaint was dismissed with prejudice as frivolous. See *Eason v. Thaler*, 14 F. 3d 8, 9 (5th Cir. 1994) (vacating dismissal of complaint as frivolous where district court failed to conduct *Spears* hearing or submit questionnaire to

⁵ See Record on Appeal at 6 (Magistrate's Report and Recommendation) ("To hold that an act of retaliation, without an accompanying cognizable claim of denial of access to the courts, is in itself a constitutional violation is without substance.").

plaintiff). Dismissal of Carson's retaliation claims without further factual development was an abuse of discretion, and must be reversed.⁶

III

For the foregoing reasons, we **REVERSE** and **REMAND**.

⁶ Because we reverse on other grounds, we need not address Carson's claim that the district court erred by denying him permission to amend and/or supplement his complaint, or his claim that the magistrate judge and the district court failed to construe his complaint liberally because they were biased against him.