

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40686  
Summary Calendar

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RAYMOND PETER GODAIRE,

Plaintiff-Appellant,

versus

WAYNE ULRICH ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:93-CV-658  
- - - - -  
(September 30, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Raymond Peter Godaire, an inmate with the Texas Department of Criminal Justice (TDCJ), requests leave to proceed in forma pauperis (IFP) on appeal. Godaire seeks to appeal the district court's dismissal of his complaint in response to Godaire's motion to dismiss under Fed. R. Civ. P. 41(a)(1). In order to prevail on the motion, Godaire must show that he is a pauper and that he will present a nonfrivolous issue on appeal. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Godaire argues that the district court erred by denying him leave to proceed IFP on appeal because he is a pauper. However, a litigant seeking IFP status must demonstrate the existence of nonfrivolous issues for appeal in addition to demonstrating pauper status. Id. Godaire has failed to do so.

Godaire argues that the district court's dismissal of his complaint without prejudice nevertheless has prejudiced him because the court denied his motion for the return of his pleadings, which include original copies of prison grievances, official responses, and sick-call requests. He also argues that he should have been allowed to amend his complaint.

Research reveals no authority suggesting that the district court erred by refusing to return to Godaire's pleadings and exhibits. However, even assuming that the district court's denial was in error, the district court may take judicial notice of the documents when Godaire refiles his complaint. See Fed. R. Evid. 201(b); MacMillan Bloedel Ltd. v. Flint Kote Co., 760 F.2d 580, 587 (5th Cir. 1985) ("A court may take judicial notice of related proceedings and records in cases before the same court."). Thus, any error was harmless. See Fed. R. Civ. P. 61. Further, because he has not demonstrated that the district court will refuse to take judicial notice of the documents, Godaire's contention that he has been prejudiced by the district court's refusal to return the pleadings is not yet ripe. See Cinel v. Connick, 15 F.3d 1338, 1341 (5th Cir. 1994), petition for cert. filed, 63 USLW 3065 (U.S. July 5, 1994)(No. 92-3781). The district court's refusal to allow Godaire to amend his complaint

also was harmless in light of Godaire's subsequent motion for a voluntary dismissal.

Godaire argues for the first time on appeal that TDCJ officials do not comply with the grievance procedure that has been certified in accordance with 42 U.S.C. § 1997(e). "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). A determination whether Godaire's allegation has merit necessarily includes a determination of factual issues; therefore, this issue is not reviewable by this Court. See id. Because he has not shown that he will present nonfrivolous issues on appeal, IT IS ORDERED that Godaire's motion for IFP is DENIED and his appeal is DISMISSED. See Carson, 689 F.2d at 586; 5th Cir. R. 42.2.

Godaire's "motion for order of protection" is DENIED because such applications must be made in the first instance in the district court. See Fed. R. App. P. 8(a). Godaire's motion for a writ of ad testificandum also is DENIED.