

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40696
Conference Calendar

JEFFERY CHARGOIS,

Plaintiff-Appellant,

versus

THOMAS MCKINNEY ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CV-188

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Jeffery Chargois argues that the district court erred in dismissing his complaint as frivolous on the basis of the doctrine of collateral estoppel. A district court may dismiss an in forma pauperis complaint as frivolous if it lacks an arguable basis in law or in fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). The dismissal is reviewed for an abuse of discretion. Id. at 1734. We must determine whether Chargois's allegations, if further developed by

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a questionnaire or a Spears** hearing, might present a nonfrivolous § 1983 claim. See Eason v. Thaler, 14 F. 3d 8, 9 (5th Cir. 1994).

The district court's dismissal of Chargois's complaint as frivolous based on collateral estoppel was premature. "In order to apply the federal law of collateral estoppel, a court must examine whether (i) the issue at stake is identical to the one involved in the prior litigation, (ii) the determination of the issue in the prior litigation was a critical, necessary part of the judgment in that earlier action, and (iii) special circumstances exist which would render preclusion inappropriate or unfair." McDuffie v. Estelle, 935 F.2d 682, 685 (5th Cir. 1991).

There is no indication in the record that the district court actually reviewed the lawsuit filed by Chargois in state court prior to reaching its determination that the state suit involved the identical issues involved in the instant litigation, and the district court did not address all of the requirements of collateral estoppel. There is no state court order dismissing the previous litigation in the record before this Court. It is not clear based on the limited pleadings filed by Chargois that his state court suit collaterally estops his instant § 1983 complaint. Further development would be required to determine if collateral estoppel provides a proper basis for dismissing the complaint.

**Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

However, the dismissal of the complaint as frivolous may be affirmed on grounds other than those relied upon by the district court. See Bickford v. Int'l Speedway Corp., 654 F.2d 1028, 1031 (5th Cir. Unit B. Aug. 1981).

To prevail on a claim under § 1983, a plaintiff must prove a violation of rights secured by the Constitution or laws of the United States and must demonstrate that the deprivation was caused by a person acting under color of law." See Leffall v. Dallas Indep. School Dist., 28 F.3d 521, 525 (5th Cir. 1994). Chargois does not identify the specific constitutional theory supporting his claim. Liberally construed, the claim could arise under a due process theory that he was deprived of a liberty interest in freedom from bodily injury, (see Daniels v. Williams, 474 U.S. 327, 328, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)), or an Eighth Amendment theory that the conditions of confinement constitute cruel and unusual punishment. See Farmer v. Brennan, ___ U.S. ___, 114 S. Ct. 1970, 1979, 128 L. Ed. 2d 811 (1994).

"The due process clause is not implicated by a negligent act of an official which causes an unintended loss of or injury to life, liberty, or property." Salas v. Carpenter, 980 F.2d 299, 306 (5th Cir. 1992). "The focus is on the Fourteenth Amendment's curb of deliberate abuses of governmental power." Id. Nor does the Eighth Amendment provide a remedy for conduct that constitutes mere negligence. See Wilson v. Seiter, 501 U.S. 294, 305, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

Chargois alleged that the defendants were responsible for providing him with adequate transportation and that they used a

defective tractor-trailer in the farming operation. Although Chargois alleged that the defendants acted with "reckless disregard" for his safety, the facts that he alleged indicate that the defendants were not aware that the trailer was in a defective condition and that they did not act with deliberate indifference. Because Chargois has not alleged an arguable legal or factual basis for a § 1983 claim, and the further factual development of his claim would not present a nonfrivolous § 1983 claim, the dismissal of his complaint as frivolous was not an abuse of discretion.

AFFIRMED.