IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40846
Summary Calendar

Terrence R. Spellmon,

Plaintiff/Appellant,

versus

Demetri Anastasiadis, et al.

Defendants/Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(6:92-CV-291)

(March 1, 1995)

Before JOHNSON, DUHÉ and BENAVIDES, Circuit Judges.[*]

JOHNSON, Circuit Judge:

Terrence R. Spellmon, a Texas state prisoner, filed a civil rights complaint against defendants contending that they had tampered with witnesses and conspired to prevent him from getting a fair trial in a prior lawsuit brought by Spellmon. The district court dismissed Spellmon's claims with prejudice under 28 U.S.C. § 1915(d) finding that the action was frivolous. Spellmon appeals and, finding no reversible error, we AFFIRM.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I. FACTS AND PROCEDURAL HISTORY

Spellmon, a state prisoner, brought suit *in forma pauperis* against two assistant attorneys general of Texas, defendants Demetri Anastasiadis and Sharon Felfe,[1] complaining of actions allegedly taken during the course of a previous lawsuit brought by Spellmon. In that earlier case, styled *Spellmon v. Lynaugh*, Ty-90-127-CA, Spellmon sued various Texas officials. Anastasiadis and Felfe defended the state officials in that prior lawsuit, which resulted in a settlement agreement between all parties.

In the instant case, Spellmon alleges that Anastasiadis and Felfe conspired to deprive him of a fair trial in the prior case by tampering with witnesses.[2] Also, Spellmon contends that the settlement agreement was the result of coercion and that its terms were breached.

The instant matter was referred to the same magistrate judge who presided over the previous proceedings. He recommended that the case be dismissed as frivolous pursuant to section 1915(d), determining that the allegations were within the scope of the

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[1] Spellmon also filed suit against Sergeant Olga Perry contending that she opened a legal letter from Spellmon to his counsel, copied it, and made it available to Anastasiadis and Felfe in the prior trial. However, summary judgment was granted dismissing Perry from the suit and Spellmon has not appealed that action.

[2] Specifically, Spellmon avers that the defendants tampered with his inmate witnesses Norwood Bonner and Larry Leonard. The defendants interviewed both of these witnesses and Spellmon claims that they frightened Bonner into changing his testimony and induced Leonard to intentionally misidentify a female officer so as to undermine his credibility.

settlement agreement from the prior case. The district court rejected this determination at that time. Upon reconsideration, however, the district court accepted the magistrate judge's recommendation and dismissed Spellmon's claim as frivolous. Spellmon now appeals.

II. DISCUSSION

A. Dismissal of the Suit as Frivolous

An *in forma pauperis* complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d) if it has no arguable basis in law or fact. *Denton v. Hernandez*, ___ U.S. ___, ___, 112 S.Ct. 1728, 1733 (1992); *Booker v. Koonce*, 2 F.3d 114, 116 (5th Cir. 1993); *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). In making these judgments, district courts are vested with broad discretion and this Court will disturb such a determination only for an abuse of that discretion. *Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986).

A claim is factually frivolous if it describes fantastic or delusional scenarios. *Neitzke v. Williams*, 490 U.S. 319, 327-28, 109 S.Ct. 1827, 1833 (1989). Examples of legally frivolous claims include claims against an individual who is clearly immune from suit or claims of infringement of a legal interest which clearly does not exist. *Id.*

In this case, the district court found that Spellmon's claims were frivolous because they were subsumed within the settlement agreement that ended the prior litigation. As noted by the magistrate judge, the factual allegations made in the

present suit of mail and witness tampering and conspiracy were discussed on the record during the trial of the prior suit and were thus known to all parties prior to the announcement of the agreement. Even so, Spellmon first proposed, then agreed to, the settlement. This settlement required Spellmon to drop all of his pending civil rights claims involving the prison system. In return, the settlement required the Attorney General to relocate Spellmon to the Darrington prison unit and to send letters to the wardens of the Hughes, Wynne and Darrington units reminding them that they were not to retaliate against Spellmon.[3]

We agree that this settlement was certainly meant to encompass the civil rights allegations of mail and witness tampering and conspiracy that arose in the prior case before the announcement of the settlement. Accordingly, if the settlement was voluntarily entered into, then Spellmon has waived his right to relitigate these claims. *See Newton v. Rumery*, 480 U.S. 386, 107 S.Ct. 1187 (1987) (upholding release-dismissal agreements whereby a criminal defendant releases his right to file civil rights claims in return for prosecutorial concessions).

Spellmon has alleged, however, that this settlement was not

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[3] The magistrate judge noted that Spellmon was promptly transferred to the Darrington unit and that the letters were sent the following day. The agreement also provided that, once Spellmon had dismissed all fifteen of the civil actions subject to the agreement, the Attorney General was to send a letter to the Parole Board apprising the Board of that fact. Spellmon alleges that the agreement was breached because this letter has not been sent. However, Spellmon has not dismissed all of the civil actions and so the Attorney General is not yet required to send that letter.

voluntary, but rather that Anastasiadis coerced him into signing the agreement by telling him that the Parole Board viewed him as a troublemaker because of his lawsuits. Even if Anasasiadis made this statement, we fail to see how it was unduly coercive. Instead, this merely seems to be part of the *quid pro quo* offered in the settlement agreement. This was the reason that the letters to the wardens and to the parole board were to be sent.

Moreover, the magistrate judge quoted at length from the settlement hearing. In that hearing, Spellmon clearly testified that he had discussed the agreement with his counsel, that he had not been unduly influenced or persuaded to enter the agreement, that he was entering the agreement of his own free will and that he understood the terms of the agreement. Accordingly, we find that Spellmon voluntarily entered into this settlement agreement.

As the settlement agreement from the prior litigation, voluntarily entered into by Spellmon, encompassed the claims that Spellmon is pressing in the instant litigation, we find that Spellmon has waived his right to advance these claims. Accordingly, the district court did not abuse its discretion in dismissing Spellmon's claims as frivolous.

B. Failure to Hold a *Spears* Hearing

Spellmon claims that the district court erred in failing to conduct a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985). Such hearings are in the nature of a motion for a more definite statement and are used to develop the claims of an *in forma pauperis* prisoner complaint that may be inartfully

stated. *Id.* According to Spellmon, such a hearing was needed to delve into the facts surrounding the settlement agreement.

Although it is inappropriate to dismiss a civil rights complaint pursuant to section 1915(d) if the plaintiff's allegations could survive section 1915(d) muster with further factual development, *Eason v. Thaler*, 14 F.3d 8, 10 (5th Cir. 1994), a district court is not required to conduct a *Spears* hearing before dismissing an *in forma pauperis* complaint as frivolous. *Green*, 768 F.2d at 1119. In this case, we fail to see how further factual development would have aided Spellmon herein.

Spellmon has not specified in any way what such a hearing would reveal nor has he shown how it would have strengthened his claims. Moreover, the important facts are clear from the record of the first trial. As the magistrate judge presided over both the previous trial and the instant action, he was thoroughly aware of the relevant legal issues and pertinent facts. Accordingly, we find no error in the failure to hold a *Spears* hearing.

C. Summary Judgment?

According to Spellmon, the district court erred in dismissing his complaint on its own motion for summary judgment without allowing him the opportunity to respond. This argument is factually frivolous because the claims against Anastasiadis and Felfe, the only appellees herein, were not dismissed on

summary judgment.[4] Rather, the claims against Anastasiadis and Felfe were dismissed as frivolous pursuant to section 1915(d).

D. Limitation of Discovery

In two points of error, Spellmon argues that the district court erred in summarily dismissing his complaint without discovery and in striking the interrogatories he filed. However, there is no right to discovery if the district court is satisfied that the action is frivolous or malicious. Dismissals on these grounds can be made by a district court *sua sponte* prior not only to discovery, but to service of process, so as to spare prospective defendants the inconvenience and expense of answering the suits. *Neitzke*, 109 S.Ct. at 1831.

In any case, though, we see no denial of discovery here. The district court assigned this case to Track Two of the Civil Justice Defense and Delay Reduction Plan. Under the constraints of Track Two, discovery is limited to disclosure.[5] No interrogatories are allowed. Accordingly, the district court did not err in striking Spellmon's interrogatories or in denying Spellmon's motions for "full discovery."

Finally, at no point has Spellmon suggested what such discovery would yield or how he has been harmed. Under these circumstances, we find no error in the dismissal of this

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[4] The claim of mail tampering against Perry was dismissed by summary judgment on the district court's own motion. However, proper notice was given for that action and Spellmon has not appealed that judgment.

[5] Spellmon has failed to comply with the provisions of the plan in that he has not provided his disclosure.

complaint because of a lack of adequate discovery.

III. CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.