UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-41072
Summary Calendar

KENNETH WAYNE HICKMAN,

Plaintiff-Appellant,

VERSUS

MARY CHOATE, SHERIFF OF BOWIE COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(5:94-CV-8)

(March 31, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Hickman appeals the dismissal of his § 1983 suit. We affirm.

I.

Kenneth Wayne Hickman, a Texas Department of Criminal Justice (TDCJ) inmate formerly housed at the Bowie County Jail, filed a *pro se* and *in forma pauperis* (IFP) civil rights complaint against Mary Choate, the Sheriff of Bowie County. Hickman amended his suit at least twice and alleged a laundry list of constitutional violations

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[1] 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

occurring at the jail. With one exception, Hickman sought only injunctive or declaratory relief. Hickman sought an investigation of the defendant's practices concerning providing law books to inmates, jail official reading inmates legal work, lack of a law library for inmates to use, failure of the jail officials to provide legal assistance to inmates. He sought injunctive relief to stop these practices and improve the inmates access to the courts. He also requested order of the court directing the jail officers to follow the guidelines in dealing with disciplinary proceedings and to put a stop to retaliation and denial of due process in connection with the disciplinary proceedings. The only claim Hickman made for relief other than declaratory or injunctive relief was his claim for damages for the loss of his legal papers.

II.

Hickman was transferred from the Bowie County jail to the custody of the Texas Department of criminal justice before he filed some of his amended complaints. We agree with the district court that Hickman's claim for injunctive relief lacks an arguable basis in fact or law. Hickman is no longer an inmate at the Bowie County jail; therefore his claims for equitable relief are moot. **See Cooper v. Sheriff, Lubbock County, Texas**, 929 F.2d 1078, 1084 (5th Cir. 1991); **Gillespie v. Crawford**, 858 F.2d 1101, 1103 (5th Cir. 1988). Hickman's contention that the defendants will transfer inmates who have filed lawsuits so that their suits will be deemed moot "is too speculative to give rise to a case or controversy."

See Bailey v. Southerland, 821 F.2d 277, 279 (1987). The district court did not abuse its discretion by dismissing as moot Hickman's claims seeking equitable and declaratory relief.

Hickman's sole claim for damages is predicated on the loss of his legal work. Although it is unclear whether Hickman claims that he owned the legal documents that were lost or that they were lost or seized by jail officials, assuming such proof Hickman must show that his legal position was prejudiced because of this deprivation. **See Hinthorn v. Swinson**, 955 F.2d 351, 354 (5th Cir.), **cert. denied**, 112 S.Ct. 2974 (1992). Hickman has neither alleged nor demonstrated that he suffered legal prejudice as a result of the loss of his legal papers, consequently the district court did not err in dismissing this claim.

Insofar as Hickman asserts a denial of property claim, neither negligence nor intentional deprivation of property by state officials rise to the level of due process violations if state law provides adequate post-deprivation remedies. **Hudson v. Palmer**, 468 U.S. 517, 533-34 (1984). Texas provides an adequate post-deprivation remedy for Hickman's property loss claim. **See** Tex. Civ. Prac. & Rem. Code Ann. § 101.021 (West 1986). Thus, a claim predicated on this theory lacks an arguable basis in law. **See Macias v. Raul A. (Unknown), Badge No. 153**, 23 F.3d 94, 97 (5th Cir. 19__). The district court did not abuse its discretion in dismissing Hickman's access-to-courts claim as frivolous.

Hickman argues that the district court's assignment of his complaint to "track two" under the Civil Justice Expense and Delay

Reduction Plan limited his ability to state a cause of action. Under the Plan, discovery is limited to disclosure only. Plan, Arts. 1, 2 (1991).

Discovery matters are entrusted to the "sound discretion" of the district court, and a plaintiff is not entitled to discovery prior to dismissal under § 1915(d). **Richardson v. Henry**, 902 F.2d 414, 417 (5th Cir.), **cert. denied**, 498 U.S. 901 (1990) and 498 U.S. 1069 (1991); 28 U.S.C. § 1915(d). Hickman makes no argument establishing that the district court abused its discretion by limiting discovery with a "track two" assignment. Further, because the district court properly determined that Hickman's claims were either moot or frivolous as a matter of law, the court's error, if any, in limiting discovery prior to dismissal was harmless. **See Union City Barge Line, Inc. v. Union Carbide Corp.**, 823 F.2d 129, 136, 138 (5th Cir. 1987)(discovery errors subject to harmless error analysis).

Hickman has two pending motions. He filed a motion to proceed IFP on appeal. However, the district court never revoked Hickman's IFP status and this motion is denied as unnecessary.

The defendant has filed a motion to supplement the record on appeal. Because the evidence defendant seeks to file does not affect the disposition of this appeal, the motion is denied.

AFFIRMED, motion DENIED.