

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-41140
Summary Calendar

JAMES E. ROWLAND,

Plaintiff-Appellant,

VERSUS

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas

(1:94-CV-476)

(January 3, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

James E. Rowland, a prisoner of the State of Texas, filed a civil rights action against Mrs. Green, Warden Smith, and Warden

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

McLeod, all employees of the Texas Department of Criminal Justice, Institutional Division. Rowland asserted that the defendants deliberately caused him pain and suffering in violation of the Eighth Amendment. He alleged that Green, the Stiles Unit Property Officer, deprived him of "piddling"¹ tools and supplies valued at approximately \$4,000-\$8,000. His mother, who has since died of cancer, sent him the "piddling" property after his "piddling" privileges had been taken away. Green informed Rowland that, unless he sent his property home or to any one who would receive it, it would be destroyed by the State. Rowland had no funds to pay for the postage, and there was no one to whom he could ship the tools and supplies. He maintained that prison officials should have kept his property in one of the piddling shop lockers until his privileges were restored. According to Rowland, the destruction of the property deprived him of his mother's last possessions because she spent all of her money on these items to provide him with the means of caring for himself in prison and thereafter. Rowland further alleged that the defendants failed to inventory his property before destroying it. He sought damages totalling \$5,460,000.

The magistrate judge determined that Rowland had previously filed a substantially similar complaint in Rowland v. Green, No. 94cv301. The district court in that case dismissed the action as

¹"Piddling" is craft work performed by inmates within the Texas prison system. Inmates in the Texas prison system are not paid for their labor except through extra-curricular "piddling" projects.

frivolous because Texas has an adequate post-deprivation remedy. The magistrate judge recommended that the district court dismiss the present complaint as frivolous because the claim was barred by the doctrine of res judicata. The district court conducted de novo review and considered Rowland's objections to the magistrate judge's report and recommendation. The district court entered a judgment dismissing the case with prejudice as frivolous and warned that future frivolous pleadings would result in progressively harsher sanctions.

OPINION

A district court may dismiss an in forma pauperis proceeding if the claim has no arguable basis in law and fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). The dismissal is reviewed for abuse of discretion. Id.

Rowland contends that this action should not be barred by res judicata. He first argues that the previous action was dismissed without prejudice to permit him to refile his claim. Further, he contends that the actions are not the same because the present cause of action is based on the Eighth Amendment, and the prior action was based on violations of due process and equal protection. Rowland contends that the defendants owed him proper care and consideration because his mother was dead, he had no funds to return the property, and there was not a soul who could receive the property.

"[P]auper status does not entitle a plaintiff to avoid the ordinary rules of res judicata." Pittman v. Moore, 980 F.2d 994,

994 (5th Cir. 1993) (citing Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969 (1989)). Res judicata is proper if four requirements are met:

- (1) the parties must be identical in the two suits;
- (2) the prior judgment must have been rendered by a court of competent jurisdiction;
- (3) there must be a final judgment on the merits; and
- (4) the same cause of action must be involved in both cases.

Russell v. Sunamerica Securities, Inc., 962 F.2d 1169, 1172 (5th Cir. 1992).

The first two elements are met because the parties are identical and the judgment was rendered by a court of competent jurisdiction. As to the third element, the § 1915(d) dismissal of the first complaint was not a dismissal on the merits. See Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1734, 118 L. Ed. 2d 340 (1992). Although this Court, citing Denton, has stated that the frivolousness determination could have a res judicata effect for future in forma pauperis petitions, the Court has not yet held as such. See Graves v. Hampton, 1 F.3d 315, 318 (5th Cir. 1993). A better course to follow is to affirm the judgment of the district court on other grounds. See Lavespere v. Niagara Mach. & Tool Works, Inc., 920 F.2d 259, 262 (5th Cir. 1990).

"[I]n forma pauperis complaints may be dismissed as frivolous if they seek to relitigate claims that allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the plaintiff." Pittman v. Moore, 980 F.2d 994, 994 (5th Cir. 1988) (citing Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969

(1989)). It is "malicious" for a pauper to file a lawsuit that is duplicative of prior federal court litigation. Id. at 995.

The present cause of action is the same. It is of no consequence that Rowland based his claims in the first complaint on due process and equal protection. His claim has not changed because he couched it in terms of an Eighth Amendment violation.

Contrary to Rowland's assertion, the district court did not dismiss the action without prejudice to allow him to file a second federal action. The district court stated that "[t]he action [was] being dismissed without prejudice to allow plaintiff to bring his property deprivation claim in state court."

Rowland's claim has no arguable basis in law and fact. The district court did not abuse its discretion in dismissing the action as frivolous, and the judgment is AFFIRMED.