

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50228
Summary Calendar

JIMMY LEE HICKSON,

Plaintiff-Appellant,

VERSUS

JACK M. GARNER, Warden, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CA-189)

(December 21, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Jimmy Lee Hickson, a prisoner incarcerated at the Hughes Unit of the Texas Department of Criminal Justice (TDCJ), appeals the dismissal of his § 1983 suit. We affirm.

I.

Hickson filed a civil rights action in the 52nd Judicial District Court, Coryell County, Texas, alleging deliberate indifference to his medical needs in violation of the Eighth and Fourteenth Amendments. The case was removed to the Western

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

District of Texas.²

The district court dismissed the action for failure to state a claim. This Court remanded for further proceedings on the issue of whether prison personnel were deliberately indifferent to Hickson's medical needs because he was forced to do work that exceeded his medical restrictions.

On remand, the district court reassigned the case to the magistrate judge. At that time, the magistrate judge issued an order requiring the marshal to serve a copy of the original complaint and any amended complaints on the defendants as directed by Hickson. It further ordered Hickson to serve any other pleadings upon the defendant and to include on such pleadings a certificate of service certifying that a correct copy had been served on the defendant. Following the defendants' answer, Hickson filed a motion to amend his complaint as well as a motion requiring a temporary restraining order or a preliminary injunction to prohibit the defendants from assigning him to work incompatible with his medical condition.

The magistrate judge ordered these pleadings stricken because the certificate of service did not comply with Local Court Rules CV-5(c) and CV-7(g). Hickson's motion to amend included a certification that he had served the amended complaint on the clerk

² The magistrate judge's report indicates that the defendants paid the appropriate filing fees in the district court when the case was removed. R. 3, 360-61. Hickson filed his case in state court because he could not proceed in forma pauperis in the Western District of Texas because sanctions of \$100, imposed in Hickson v. Garner, No. W-90-CA-298, had not been paid. Id. at 361.

of court but did not certify service on the defendants.

Hickson then filed another supplemental complaint, this time including a certificate of service that requested that a copy of the complaint be served on defendant's counsel of record. Once again, the magistrate judge struck the pleadings for noncompliance with Local Court Rules CV-5(c) and CV-7(g) and because the pleading was not accompanied by a motion requesting leave to file the pleading.

Hickson appealed the magistrate judge's order striking the pleadings to the district court, arguing that the documents included a certificate of service and that the pleadings had been served. The district court denied the appeal, concluding that because the magistrate judge's determination that the various pleadings did not comply with the local rules was neither clearly erroneous nor contrary to the law.

Hickson filed a "Reply, Objection to the U.S. District Judge's Order" requesting that the exhibits attached to his motion to amend be returned to him so that he could refile them in accord with the local rules. The magistrate judge granted the motion to return the exhibits. Hickson also refiled his "Motion for TRO and/or PI" and a "Motion to Dispense with the Requirement of Security." The magistrate judge ordered that the "Motion to Dispense with the Requirement of Security" be stricken again for noncompliance with the local rules concerning certificate of service.

Hickson filed an appeal in the district court alleging that the magistrate judge had stricken his "Motion for TRO and/or PI."

The district court rejected his appeal as premature because the district court had not yet considered Hickson's motion. The district court warned Hickson that the continued filing of frivolous appeals would result in the imposition of sanctions in the form of either monetary penalties or striking the pleadings. The magistrate judge later denied the motion for TRO and/or preliminary injunction on the basis that Hickson had not alleged the requisite elements.

Hickson filed a motion for leave to file a supplemental complaint, which included additional parties and claims not previously raised. The magistrate judge denied the motion for the following reasons:

In his motion, Plaintiff seeks leave to add additional defendants and additional claims regarding recent disciplinary action for failure to work as assigned. Although the proposed amendment is generically related to the claim that he has been forced to work beyond his medical capabilities raised in his original complaint, there is no factual nexis [sic] between the actions complained of in his original complaint and those he complains of in his proposed supplemental complaint.

Hickson again appealed the order to the district court. The district court held that the magistrate judge's decision was neither clearly erroneous nor contrary to the law and a fine as a sanction for continued filing of frivolous appeals. The district court admonished that, if Hickson unsuccessfully appealed another pretrial order of the magistrate judge, his pleadings would be stricken.

Hickson filed yet another "Motion for Leave to File a Supplemental Pleadings," which was essentially the same as the

previous motion. He also filed a "Request to Enter Default" and a "Request for Default Judgment," arguing that the defendants had "fail[ed] to plead or otherwise defend." The magistrate judge denied the requests and imposed a sanction in the amount of \$25 for the repeated filing of frivolous motions.

Hickson filed a "Reply, Objection to the United States Magistrate Judge," arguing that defendants' answer was premature and that the defendants had failed to raise a defense in that they had not filed a motion for summary judgment or a motion to dismiss within the time allotted by the magistrate. Hickson also asked that the district court reverse the \$25 sanction. The district court found that Hickson's request for entry of default was frivolous and ordered that the pleadings be stricken and the case dismissed, stating:

Despite the imposition of sanctions and strong warnings regarding continued filing of frivolous pleadings, Plaintiff has continued in his campaign to win his claim not upon the merits, but through deluging the Court with paperwork. The actions of the Plaintiff exhibit no true desire to prosecute this case, but merely to harass the Court through abuse of the legal process. While pro se pleadings are afforded wide latitude, this [] does not grant the pro se litigant a license to abuse the process.

II.

Hickson contends that the district court abused its discretion in dismissing the action with prejudice as a sanction for abusing the legal process. He contends that he had no desire to harass the district court. He argues that he was preserving his objections to the magistrate judge's orders in order to obtain de novo review by the district court at the appropriate time.

Rule 11, as amended, provides that if a court determines that a paper is signed in violation of the rule, "the court . . . may impose an appropriate sanction" Fed. R. Civ. P. 11. We review a district court's decision to invoke Rule 11 for an abuse of discretion. See Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 872 (5th Cir. 1988) (en banc). In reviewing a district court's sanctions against vexatious or harassing litigants, this Court inquires whether 1) a prior warning has been given; 2) the sanction exceeds the bound of discretion under Fifth Circuit jurisprudence; and 3) the sanction is the least severe sanction adequate. Mendoza v. Lynaugh, 989 F.2d 191, 195-97 (5th Cir. 1993).

The district court warned Hickson that his pleadings would be stricken if he unsuccessfully appealed another pretrial order. Hickson was aware of the implications of the warning because he is no stranger to the legal system and has been sanctioned in the Western District for filing frivolous lawsuits. Hickson offers no satisfactory explanation for his refusal to certify service of pleadings on opposing parties as required by the Rules. He also does not explain the repeated motions for default judgment when the defendants had appeared.

Although the sanction of dismissal is extreme, Hickson persistently refused to follow the court's orders. Under these circumstances we are persuaded that the district court did not abuse its discretion.

AFFIRMED.