

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-50500  
Summary Calendar

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DAVID E. HENDERSON,

Plaintiff-Appellant,

VERSUS

RAY HERBERGER, President American Graduate School  
of International Management, Glendale, Arizona, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(A-94-CV-164)

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(December 29, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

David E. Henderson sued Ray Herberger, President of the American Graduate School of International Management (AGSIM), and Deborah Kastrin, an employee of the Texas Department of Commerce, alleging civil rights, RICO, and state-law slander claims. The magistrate judge determined that Henderson had not stated a claim under 42 U.S.C. § 1983 because he had not alleged a violation of a constitutionally-protected right and that he had not alleged any of the necessary elements of a RICO cause of action or established

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that he had standing to bring a private RICO claim. Accordingly, the magistrate judge recommended that the complaint be dismissed as frivolous.

Henderson objected to the magistrate judge's recommendation. The district court dismissed the complaint with prejudice pursuant to 28 U.S.C. § 1915(d). The court concluded that Henderson had failed to state a claim under RICO because Henderson had not alleged actionable conduct by either defendant and because he had not established that Herberger and Kastrin had engaged in any activity connected to a RICO enterprise. The court determined that Henderson's other claims lacked a constitutional basis and that it lacked pendant jurisdiction over those claims because complete diversity jurisdiction was lacking.

Henderson urges that the district court abused its discretion by dismissing his claims as frivolous and requests that the case be remanded so that he may add an age discrimination claim to his complaint.

A complaint filed in forma pauperis may be dismissed as frivolous if it lacks an arguable basis in fact and law. This Court reviews a dismissal under § 1915(d) for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

The district court did not abuse its discretion in finding Henderson's RICO claims legally frivolous. Henderson's conclusional allegations do not establish either the existence of a RICO enterprise or the requisite predicate acts, nor does it appear that any amendment could cure the defects. See National

Organization of Women, Inc. v. Scheidler, 114 S.Ct. 798 (1994); In Re Burzynski, 989 F.2d 733, 742-43 (5th Cir. 1993). Henderson has not presented an appellate argument concerning the district court's determinations that diversity jurisdiction did not exist and that his allegations failed to implicate a constitutional violation; therefore, those issues are waived. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

In the concluding sentence of his objection to the magistrate judge's Report and Recommendation Appellant stated: "Plaintiff requests the Court for permission to amend his COMPLAINT FOR DAMAGES in line with the above, as well as to add a complaint for age discrimination under U.S.C. 1983 and to request a jury trial." In its ruling the district court did not address this statement. In this Court appellant contends that the district court abused its discretion in not allowing him to amend. We disagree. First, even in pro se pleadings, the quoted sentence is not the equivalent of a motion to amend under Rule 15. Second, no responsive pleadings had been filed so permission of the court to amend was not needed. The district court's silence was then not an abuse of discretion.

AFFIRMED.