

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-50506  
Conference Calendar

---

MICHAEL IDROGO, individually  
and as Lieutenant Commander  
Idrogo,

Plaintiff-Appellant,

versus

ANDY MIRELES, individually and  
in his official capacity as  
Judge of 73rd Judicial  
District Court of Bexar County,  
Texas, ET AL.,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-94-CV-331  
- - - - -

(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that Michael Idrogo's motion for leave to  
proceed in forma pauperis is DENIED, because his appeal lacks  
arguable merit and is therefore frivolous. Howard v. King, 707  
F.2d 215, 219-20 (5th Cir. 1983). In ruling on the motion, this  
Court has examined Idrogo's motion and brief in the light most

---

\* 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that this opinion should not be published.

favorable to him and has reviewed the record for any basis to support granting him relief on appeal. Because we have concluded on this review that the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

IT IS FURTHER ORDERED that Idrogo's motions for the appointment of counsel and for a "leave of absence" are DENIED.

Appellant Michael Idrogo alleged in his complaint that appellee Andy Mireles, a judge of the 73rd Judicial District Court of Bexar County, Texas, violated his constitutional rights by granting Idrogo's former wife, appellee Wendolyn Bohn (Bohn), a divorce and by ordering his employer to withhold an amount from his income for child-support payments. In response to the magistrate judge's questionnaire, Idrogo stated that he had not specifically alleged that Judge Mireles conspired with Bohn. Then he asserted that the "conspiracy" consisted of an agreement between Judge Mireles and Bohn that he, Idrogo, is divorced. The district court dismissed the action, as recommended by the magistrate judge's report.

To be granted leave to appeal IFP, Idrogo must demonstrate that he is impecunious and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). An action is frivolous under § 1915(d) "if it lacks an arguable basis in law or fact." Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). This Court reviews § 1915(d) dismissals "utilizing the abuse of discretion standard." Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). Dismissal of an action without granting leave to amend is not an abuse of discretion if the

claims are "based upon a legally unarguable proposition." Eason, 14 F.3d at 9, 8-9. Arguably, a Rule 12(b)(6) dismissal in this case may not have been appropriate. See Tyler v. Mmes. Pasqua & Toloso, 748 F.2d 283, 287 (5th Cir. 1984), overruled on other grounds, Victorian v. Miller, 813 F.2d 718, 724 (5th Cir. 1987) (en banc). However, it is appropriate to dismiss Idrogo's appeal on authority of § 1915(d), because there is no legal basis for his claims. See Eason v. Thaler, 14 F.3d at 9.

Idrogo contends that Judge Mireles is not immune from suit because he acted entirely without jurisdiction in the divorce proceedings. He bases this on doctrine of his religion that marriages are indissoluble and his contention that "Religious Matrimony is protected by the First Amendment . . . and has many other legal protections."

"It is settled law that a state judge enjoys absolute immunity from liability for any damages resulting from judicial acts performed within his jurisdiction." Brinkmann v. Johnston, 793 F.2d 111, 112 (5th Cir. 1986). Accordingly, state judges have absolute immunity from suit relative to divorce proceedings over which they presided. Hale v. Harney, 786 F. 2d 688, 690 (5th Cir. 1986).

Idrogo's claims against Bohn are no less frivolous. "Although private acts may support an action for liability under 42 U.S.C. § 1983 if the individual is a willing participant in a joint action with the state or its agents, [Idrogo's] complaint in the present case does not state any factual basis to support his conspiracy charges." Brinkmann, 793 F.2d at 112 (citations

and quotation marks omitted). Idrogo attempts to support his conspiracy claim by submitting "[f]actual evidence, not previously requested" or submitted. This allegedly consists of a page from Bohn's motion for default judgment, and a page from the divorce decree which states that Bohn's attorney "takes" \$1,000. Those exhibits are not attached to Idrogo's brief, but if they were, they would not establish a conspiracy between Bohn and Judge Mireles.

The principles of judicial immunity and that bare allegations of conspiracy cannot support a § 1983 claim seeking to overturn a state judgment "are not limited to actions which candidly seek review of the state court decree; [they extend] to others in which the constitutional claims presented [in federal court] are inextricably intertwined with the state court's grant or denial of relief." Brinkmann, 793 F.2d at 113 (citation and quotation marks omitted). Any "[e]rrors committed by state judges in state courts are for correction in the state court system." Id. Thus, Idrogo's claim based on the child-support order also is legally frivolous.

Brinkmann was a pro se appellant whose appeal this court dismissed as frivolous. Id. Idrogo's appeal is similarly frivolous although he relies on the First Amendment and other legal authority. Texas state law specifically provides for divorce actions such as Bohn's action against Idrogo. See Tex. Family Law Code Ann. §§ 3.01-3.08 (West 1993).

APPEAL DISMISSED.