

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50682
Summary Calendar

CHARLES YOUNG,

Plaintiff-Appellant,

versus

JANIE L. SWEENEY ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-265

- - - - -
(January 13, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

Charles Young has filed a motion with this Court to proceed in forma pauperis (IFP) in the appeal of the dismissal of his civil rights suit pursuant to Fed. R. Civ. P. 41(b). To prevail, Young must demonstrate that he is a pauper and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Young has not demonstrated that he raises a nonfrivolous issue for appeal.

A Rule 41(b) dismissal with prejudice will be affirmed if the "case discloses both (1) a clear record of delay or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contumacious conduct by the plaintiff, and (2) that a lesser sanction would not better serve the best interests of justice." McNeal v. Papasan, 842 F.2d 787, 790 (5th Cir. 1988). This Court has explained that contumacious conduct is "the stubborn resistance to authority" and justifies a dismissal with prejudice. Id. at 792.

The record discloses that Young has failed continually to heed court warnings about filing frivolous pleadings. Moreover, the record shows that the district court employed lesser sanctions that proved futile and that it made express findings concerning the inadequacy of lesser sanctions. The district court did not abuse its discretion in dismissing the suit under Rule 41(b). Young's motion for IFP is DENIED and his appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.