

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 94-60208
Summary Calendar
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FRANK HANNER, JR.,

Plaintiff-Appellant,

versus

U.S. GOVERNMENT,

Defendant-Appellee.

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Appeal from the United States District Court for the
Northern District of Mississippi
(CA 4:93-338-S-D)
S)))))))))Q

(August 22, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

Plaintiff-appellant Frank Hanner, Jr. (Hanner), an inmate at the Mississippi State Penitentiary, brought this suit consisting of a *Bivens*¹ action against various federal defendants, civil rights claims under 42 U.S.C. § 1983 against two private associations, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ *Bivens v. Six Unknown Named Agents*, 91 S.Ct. 1999 (1971).

claims under the Federal Tort Claims Act.² He alleged that "each day" the defendants are involved in violations of various amendments to the Constitution together with the judges of this Court and the Northern and Southern Districts of Mississippi. Further, Hanner alleged infractions of the Rules of Evidence, the Federal Rules of Appellate Procedure, and the Federal Rules of Civil and Criminal Procedure.

The district court concluded that, other than Hanner's unhappiness with the *Spears*³ hearing process, it was unable to determine the nature of Hanner's complaint or the remedy he was seeking. The district court dismissed the complaint as frivolous, imposed monetary sanctions in the amount of \$50, and ordered the clerk of the court to decline to accept any further filings from Hanner until the sanctions were satisfied.

Hanner filed a document which the district court construed as a motion to alter or amend the judgment. The district court denied the motion and instructed the clerk of court to permit Hanner to file a notice of appeal, even though he had not paid the sanctions.

Hanner argues that the federal supervisors failed to correct or manage the constitutional violations of the "lower courts" and,

² The defendants are the United States government, the Solicitor General, the Attorney General, the Directors and agents of the Federal Bureau of Investigation, the Chairmen of the House of Representatives and the Senate, the Director of the Administrative Office of the United States Judiciary, the Director of the Judicial Council, the United States Civil Rights Commission, the Surgeon General of the United States, the Director of the Federal Bureau of Prisons, the Director of the United States Coroners, the American Bar Association, and the National Association for the Advancement of Colored People.

³ *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

in particular, the conspiracy between the federal courts and the State of Mississippi to imprison him in violation of the Eighth Amendment.

A district court may dismiss an *in forma pauperis* (IFP) proceeding if the claim has no arguable basis in law or fact. *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." *Denton v. Hernandez*, 112 S.Ct. 1728, 1733 (1992). "Should it appear that insufficient factual allegations might be remedied by more specific pleading, [this Court] must consider whether the district court abused its discretion by dismissing the complaint either with prejudice or without any effort to amend." *Eason v. Thaler*, 14 F.2d 8, 9 (5th Cir. 1994).

The district court did not conduct a *Spears* hearing or provide a questionnaire to develop Hanner's allegations. However, the use of these vehicles was unnecessary because the facts alleged by Hanner are "'fantastic or delusional scenarios.'" See *Eason*, 14 F.2d at 9 n.5 (quoting *Neitzke v. Williams*, 109 S.Ct. 1827 (1989)). No further factual development would have served to remedy the frivolous allegations against these defendants. Because Hanner's claims have no arguable basis in fact or law, the district court did not abuse its discretion in dismissing the claims as frivolous. The dismissal is affirmed.

Hanner challenges the district court's imposition of sanctions. He argues that the district court is aware that he is a pauper and cannot pay the sanctions because it certified him to

proceed IFP. Moreover, he contends that the district court should not be permitted to impose sanctions for the purpose of concealing the conspiracy between the federal courts and the State of Mississippi.

The Court reviews the "district court's sanctions against vexatious or harassing litigants . . . under the abuse of discretion standard." *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993). This Court inquires whether 1) a prior warning has been given, 2) the sanction exceeds the bounds of discretion under Fifth Circuit jurisprudence, and 3) the sanction is the least severe, adequate sanction. *Id.* at 195-97.

The district court did not abuse its discretion in imposing sanctions. The district court provided a nonexhaustive list of six frivolous complaints filed by Hanner and stated that Hanner had been warned that "continued filing of frivolous complaints could result in sanctions by the court." Moreover, a financial penalty of \$50 is not so strict as to constitute an abuse of discretion. The district court's award of sanctions is also affirmed.

Hanner's litigious history is well known to this Court. See *Hanner v. State of Mississippi*, Nos. 93-7386 and 93-7486 (5th Cir. Oct. 28, 1993). This Court has warned Hanner that it would impose sanctions if he persisted in filing frivolous appeals. See *id.* Even though Hanner's appeal from the section 1915(d) dismissal is frivolous and was filed subsequent to this Court's warning, his appeal from the district court's imposition of monetary sanctions may be only arguably frivolous. Moreover, the district court granted Hanner permission to file the appeal. We elect not to

impose sanctions for frivolous appeal in this instance. We specifically warn Hanner that this forbearance will not continue and sanctions will be imposed by this Court for any further frivolous appeal.⁴

The judgment below is AFFIRMED. Hanner is warned.

⁴ All pending motions are denied.