

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-60365  
Summary Calendar

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ROBERT TUBWELL and  
STEPHEN B. WILLIAMS,

Plaintiffs-Appellants,

VERSUS

JOYCE T. ALMOND,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Mississippi

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(4:94-CV-115-D-0)

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(November 30, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Robert E. Tubwell and Stephen B. Williams ("plaintiffs"), prisoners incarcerated at the Mississippi Department of Corrections, filed a civil rights suit against Joyce Almond, a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deputy clerk in the Northern District of Mississippi, seeking damages and declaratory and injunctive relief. The plaintiffs alleged the following facts in their complaint: The plaintiffs are inmate paralegals assigned to provide legal assistance to the class of prisoners involved in Gates v. Collier, 454 F. Supp. 579 (N.D. Miss. 1978), aff'd, 606 F.2d 115 (5th Cir. 1979). They sent a "Motion to Vacate and Set Aside Order Approving Administrative Remedy Program Or, In the Alternative, Motion for Leave and Notice of Out-Of-Time Appeal of Order" to the Clerk of Court to be filed in the Gates suit. The plaintiffs also requested that a copy of the motion be presented to the district judge in the Gates case.

The defendant Almond intercepted the motion and sent the pleading to class counsel, Ronald Welch, "an adverse party," instead of filing it in accord with the plaintiffs' written instructions. The motion contained objections to the manner in which Welch was representing the Gates class. According to the plaintiffs, Almond "constantly refuses to file pleadings" for the inmate writ-writers and instead forwards the pleadings to Welch, who takes no action on them. Plaintiffs alleged that Almond is denying them access to the Gates litigation in contravention of her duty to file all pleadings or return them to the sender.

The district court determined that Almond is "cloaked with quasi-judicial immunity" because her acts were judicial in nature, and dismissed the complaint as frivolous.

#### OPINION

The plaintiffs argue that the district court abused its

discretion in dismissing the complaint as frivolous, because class members have the right to intervene or object to judgments on the grounds that they were not adequately represented in the class. Plaintiffs argue that the pleadings that they attempted to file challenged class counsel's actions and the manner in which counsel presented the ARP.

Plaintiffs argue that the clerk's duty was not discretionary and was "dictated by law," and that thus she was not entitled to "quasi-judicial immunity." Plaintiffs argue that Almond is entitled only to qualified immunity and that she is not entitled to the defense because her actions were clearly established to be wrong at the time that she committed them.

A clerk of a federal district court has qualified immunity from monetary damages when performing routine acts and absolute immunity when acting in a nonroutine matter under the command of a court decree or at the direction of a judge. Williams v. Wood, 612 F.2d 982, 984-85 (5th Cir. 1980). The act of filing pleadings has been held to be ministerial rather than judicial in nature and, thus, not protected by absolute immunity. See McCray v. State of Maryland, 456 F.2d 1, 4 (4th Cir. 1972). But see Mullis v. United States Bankruptcy Court for Dist. of Nevada, 828 F.2d 1385, 1390 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988) (court clerks have absolute immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process, including filing pleadings).

It is not clear from the limited record presented whether

Almond was acting pursuant to a court order or, as alleged by the plaintiffs, in accord with her routine duties in forwarding the pleadings to the class counsel. The Court stated only that the clerk's actions were "entirely appropriate; the correct course of action; and consistent with effective management of a complex class action governed by [Fed. R. Civ. P.] 23 and relevant case law."

We hold that the district court abused its discretion in dismissing the complaint on the basis of absolute immunity at this stage of the proceeding. Therefore, we remand the case for further factual development regarding the propriety of a disposition under the doctrine of immunity.

Further, the district court did not address the plaintiffs' claims for injunctive or declaratory relief. Neither absolute nor qualified immunity extends to suits for injunctive or declaratory relief. Chrissy F. by Medley v. Miss. Dep't of Pub. Welfare, 925 F.2d 844, 849 (5th Cir. 1991). On remand, the district court should address the merits of these claims.

VACATED and REMANDED.