IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60747
Conference Calendar

FREDERICK TYRONE RIDGE,

Plaintiff-Appellant,

versus

WAYNE SCOTT, Director,
Texas Department of Criminal Justice,
Institutional Division, ET Al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA G-91-284
- - - - - - - - - - -
(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Frederick Tyrone Ridge has filed a motion to proceed in forma pauperis (IFP) in the appeal of the dismissal of his civil rights action for failing to comply with the court's order for a more definite factual statement. To prevail, Ridge must demonstrate that he is a pauper and that he will present a nonfrivolous issue for appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Ridge has not presented a nonfrivolous issue for appeal.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A district court may sua sponte dismiss an action for failure to prosecute or to comply with any court order. Fed. R. Civ. P. 41(b); McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). A sua sponte dismissal by the district court pursuant to Rule 41(b) is reviewed for an abuse of discretion. McNeal v. Papasan, 842 F.2d 787, 789-90 (5th Cir. 1988).

The scope of the district court's discretion is narrow when the Rule 41(b) dismissal is with prejudice or when a statute of limitations would bar reprosecution of a suit dismissed without prejudice under Rule 41(b). See id.; Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1190-91 (5th Cir. 1992) (dismissal for failure to prosecute). Although the district court specified that the dismissal was without prejudice, Ridge's claims are based on events which allegedly occurred in 1990 and 1991, and they are barred by the Texas statute of limitations. See Henson-El v. Rogers, 923 F.2d 51, 52 (5th Cir.), cert. denied, 501 U.S. 1235 (1991); Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (West 1994). The dismissal is thus tantamount to a dismissal with prejudice. McNeal, 842 F.2d at 793 n.1.

When the dismissal is effectively with prejudice, this court looks at whether the record discloses both "a clear record of delay or contumacious conduct by the plaintiff" and whether "a lesser sanction would not better serve the best interest of justice." Id. at 790. Moreover, this court "cannot affirm a dismissal unless the district court expressly considered alternative sanctions and determined that they would not be sufficient to prompt diligent prosecution or the record reveals

that the district court employed lesser sanctions prior to dismissal (assuming that plaintiff was capable of performing them) that in fact proved to be futile." Id. at 793 (quotation omitted). Such lesser sanctions may include assessment of fines, costs, or damages; conditional dismissal; dismissal without prejudice; and explicit warnings. Rogers v. Kroger Co., 669 F.2d 317, 321 (5th Cir. 1982).

This court has explained that contumacious conduct is "the stubborn resistance to authority" and justifies a dismissal with prejudice. McNeal, 842 F.2d at 792. The record is replete with instances of Ridge's stubborn resistance to filing a more definite statement. Instead of answering the questions posed by the district court when given the opportunity on two occasions, he insisted on making new claims about how his more definite statement was maliciously absconded by mail room personnel.

Moreover, the record shows that the court gave Ridge several explicit warnings that, if he did not file a more definite statement, his case would be dismissed. Rogers, 669 F.2d at 321. Ridge ignored the warnings. Accordingly, the court did not abuse its discretion when it dismissed Ridge's suit for failure to prosecute. Because Ridge has not presented a nonfrivolous issue for appeal, his motion for IFP is DENIED. Further, Ridge's appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.

Moreover, given the frivolous nature of the instant appeal and the fact that Ridge has already been sanctioned for filing a frivolous lawsuit (see Ridge v. Nies, No. 93-5142, p. 3 (5th Cir. Jan 4, 1994) (unpublished; copy attached)), he is warned that the

filing of another frivolous appeal will result in the full panoply of sanctions which may include a fine.