

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-20319  
Conference Calendar

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DONALD RANDLE,

Plaintiff-Appellant,

versus

SUPERIOR PRODUCTS COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-95-0771  
- - - - -  
June 27, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

A complaint filed in forma pauperis can be dismissed sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d); Cay v. Estelle, 789 F.2d 318, 323 (5th Cir. 1986). A complaint is frivolous if it lacks an arguable basis in law or fact. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992). This court reviews the dismissal for an abuse of discretion. Id.

"A claim for relief under section 1983 requires a showing of two elements: first, that the claimant has been deprived of 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

right 'secured by the Constitution and laws' of the United States, and second, that the deprivation was conducted 'under color of any statute . . . of any State.'" Frazier v. Board of Trustees of N.W. Miss. Regional Medical Ctr., 765 F.2d 1278, 1283 (5th Cir. 1985) (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970)), amended in other part, 777 F.2d 329 (5th Cir. 1985), cert. denied, 476 U.S. 1142 (1986). Randle's claim against Superior Products fails because he has failed to show that he was injured as the result of any state action. His sole claim is against Superior Products, a company which Randle described as the "distributor" of the defective product. Randle has not alleged that Superior is a state actor and therefore he cannot establish that state action caused his boil to develop, nor has he alleged any basis for jurisdiction other than § 1983.

Randle's appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because this appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.