

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50057
Summary Calendar

WAYNE C. TRETTER,

Plaintiff-Appellant,

versus

JOHN J. SPECIA, JR., JUDGE,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(SA-95-CV-1058)

July 5, 1996

Before POLITZ, Chief Judge, SMITH and BARKSDALE, Circuit Judges.

PER CURIAM:*

Wayne C. Tretter, a Texas state prisoner, appeals the district court's assessment of costs in the amount of \$120 following the dismissal as frivolous of his *pro se in forma pauperis* 42 U.S.C. § 1983 civil rights complaint. Tretter seeks

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

an order from the court *a quo* directing the state court to set a trial date on a pending state court action. Federal courts lack the authority to issue such an order¹ and the complaint is therefore legally frivolous.² Under these circumstances the district court's dismissal with imposition of costs under 28 U.S.C. § 1915(e) (now § 1915(f)) was not an abuse of discretion.³

AFFIRMED.

¹**Moye v. Clerk, DeKalb County Superior Court**, 474 F.2d 1275 (5th Cir. 1973).

²**Booker v. Koonce**, 2 F.3d 114 (5th Cir. 1993).

³**Moore v. McDonald**, 30 F.3d 616 (5th Cir. 1994).