

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50010
Summary Calendar

EDDIE HERNANDEZ,

Plaintiff-Appellant,

versus

NATHAN, Doctor; LEN O. KERR, JR., Doctor,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-96-CV-189
- - - - -

December 15, 1997

Before JONES, SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Eddie Hernandez (#702949) has moved for appointment of counsel. Hernandez has failed to show that exceptional circumstances require appointment of counsel. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The motion is DENIED.

Hernandez has moved this court for leave to proceed in forma pauperis on appeal. Under the circumstances of this case, we construe the motion as an appeal from the district court's order

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

certifying that this appeal was not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). Hernandez contends that the district court improperly resolved disputed issues of fact and failed to provide him with an opportunity to develop his allegations in dismissing his complaint for failure to state a claim and as legally frivolous. The complaint, however, alleged no more than disagreement with Hernandez' medical treatment. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). The district court did not err in certifying that this appeal was not taken in good faith. The motion for leave to proceed IFP on appeal is DENIED.

Because Hernandez' appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. We caution Hernandez that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Hernandez is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous.

MOTION FOR APPOINTMENT OF COUNSEL DENIED; IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.