UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 99-10722
No. 99-11025
(Summary Calendar)

NOEMI A. COLLIE,

Plaintiff-Appellant,

versus

JOE KENDALL, U.S. District Judge; JERRY L. BUCHMEYER, Chief District Judge,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 3:98-CV-1678-G

June 9, 2000

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:[*]

Noemi Alessandra Collie appeals from the dismissal of her *Bivens* action against United States District Judge Joe Kendall and United States Chief District Judge Jerry L. Buchmeyer. Collie and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

her attorney, Frank Hernandez, also appeal from the imposition of sanctions against them pursuant to Fed. R. Civ. P. 11. For the reasons set forth below, we dismiss the appeals as frivolous.

Collie was suspended from the practice of law before the district court by Judge Kendall pending payment of a monetary sanction.[1] The suspension was affirmed by Chief Judge Buchmeyer. Collie was ultimately reinstated after she paid the sanction. We subsequently held that Collie's right to due process had been violated because she had not received notice and an opportunity to be heard before she was suspended. *See Dailey v. Bought Aircraft Co.*, 141 F.3d 224, 230-31 (5th Cir. 1998).

Collie, represented by Hernandez and acting as *pro se* co-counsel, filed a complaint against Judge Kendall and Chief Judge Buchmeyer pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), regarding the due process violation that we recognized. Collie sought both damages and injunctive relief in the form of (1) an order barring either judge from presiding over any cases in which Collie or Hernandez participated, (2) an order for all of the district judges of the Northern District of Texas to comply with the Federal Rules of Civil Procedure, all local rules, and the Constitution when dealing with her or Hernandez, and (3) an order requiring Judge Kendall and Chief Judge Buchmeyer to announce at every docket call that they had wrongfully suspended Collie and that her suspension had been overturned on appeal.[2]

Judge Kendall and Chief Judge Buchmeyer moved for dismissal on the basis of absolute judicial immunity and for the imposition of sanctions pursuant to Fed. R. Civ. P. 11. The district

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[1] Her suspension was subsequently modified to allow Collie to participate in her ongoing cases.

[2] Since Hernandez had previously been suspended from practice before the district court, District Court Judge Fish ordered Collie to substitute counsel or be prepared to proceed *pro se*.

court dismissed Collie's action on these grounds and sanctioned Collie and Hernandez for the amount of the attorney's fees incurred by Judge Kendall and Chief Judge Buchmeyer. Collie filed a timely appeal.

On appeal, Collie contends that the judges were not absolutely immune from her claims for damages and injunctive relief. Specifically, she argues that the doctrine of absolute immunity does not apply here because (1) the deprivation of due process recognized by this court in *Dailey* deprived the judges of all jurisdiction, (2) the suspension of an attorney is an administrative rather than a judicial act, (3) a district court lacks subject-matter jurisdiction to disbar an attorney, and (4) the micro-management of an attorney's practice is administrative, not judicial, in nature.

When damages are sought, "[a]bsolute judicial immunity extends to all judicial acts that are not performed in the clear absence of all jurisdiction." *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993). In assessing an immunity claim, we consider four factors: "(1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity." *Id.* All of these factors support the district court's finding that Judge Kendall and Chief Judge Buchmeyer were absolutely immune from Collie's claim for damages.

First, a deprivation of procedural due process does not constitute an action in the clear absence of all jurisdiction so as to strip a judge of absolute immunity. *See Stump v. Sparkman*, 435 U.S. 349, 355-60 (1978). Second, a suspension or disbarment proceeding is adversarial and quasi-criminal in nature, *see United States v. Brown*, 72 F.3d 25, 29 (5th Cir. 1995), and is therefore judicial in nature. Third, Collie was suspended in an order issued by the district court in an ongoing legal

action as a sanction for her conduct in litigation before the district court. *See Malina v. Gonzales*, 994 F. 2d 1121, 1124 (5th Cir. 1993).

With respect to Collie's claim for injunctive relief, we note that we have not yet determined whether federal judges who are named as defendants in *Bivens* actions enjoy absolute immunity against claims seeking injunctive relief. However, we need not decide this issue here. In this case, the injunctive relief that Collie seeks is frivolous and, in some respects, ridiculous. As such, we will not grant the requested relief.

Collie next contends that the district court improperly deprived her of her counsel of choice when it ordered Hernandez, who had been suspended from practice before the district court, to withdraw from the case. Because Collie impermissibly makes this argument by incorporating her district court pleadings by reference, she waives the argument and we need not address its merits. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

Next, Collie contends that the district court erred in imposing sanctions against (1) Collie, because she was a represented party, and (2) Hernandez, because he withdrew from representation and had no control over whether any frivolous pleadings was withdrawn pursuant to Fed. R. Civ. P. 11(c)(1)(A). She further argues that the sanctions order was erroneous because she and Hernandez made their argument regarding judicial immunity in good faith, though admittedly in the face of established legal precedent. These arguments are frivolous for several reasons.

First, because Collie is an attorney and signed the complaint as *pro se* co-counsel, the provision of Rule 11 against sanctioning a represented party did not apply to her. *See Jennings v. Joshua Ind. Sch. Dist.*, 948 F.2d 194, 197 (5th Cir. 1992) ("In *Business Guides*, the Supreme Court held that any attorney, represented party, or pro se litigant who signs a pleading or other paper or

affidavit without first conducting a reasonable inquiry may be liable for Rule 11 sanctions."). Second, Hernandez was served with the Rule 11 motion for sanctions and, rather than disassociating himself from the complaint within the twenty-one-day period for avoiding sanctions, he argued that the complaint had merit. *See* Fed. R. Civ. P. 11(c)(1)(A).[3] In this situation, the district court's decision to sanction Hernandez for a frivolous motion that he signed was not plainly erroneous solely because Hernandez had been ordered out of the case.[4] Third, Collie's argument against judicial immunity against damages actions amounted to nothing more than an argument that long-standing precedent was wrong and should be changed. Collie's concedes that she knew her argument was counter to established precedent and she presents no "nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b)(2). Accordingly, the imposition of sanctions was not an abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

This is the second time that Collie has raised the same meritless arguments that the doctrine of absolute judicial immunity does not apply to the instant case. We take this opportunity to warn Collie that the filing of any further frivolous appeals in this court—including any frivolous petitions for rehearing—will result in the imposition of sanctions under Fed. R. App. P. 38.

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[3] We recognized that because Hernandez signed the complaint as co-counsel, he might not have been able to comply with the letter of Rule 11(c)(1)(A)—which requires withdrawal or correction of the challenged filing within twenty-one days—on his own. At the very least, however, he could have complied with the spirit of that rule by filing a motion disavowing the complaint on his own behalf.

[4] Because Hernandez raises the argument that he had no control over the filing of frivolous pleadings for the first time on appeal, we review this argument under the plain-error standard of review. *See Douglass v. United States Servs. Auto. Ass'n*, 79 F.3d 1415, 1428 (5th Cir. 1996) (en banc).

For the reasons set forth above, the appeals are DISMISSED pursuant to 5th Cir. R. 42.2.

SANCTIONS WARNING ISSUED.