

April 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-41420  
Conference Calendar

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JAY BRENT VINEYARD,

Plaintiff-Appellant,

versus

CAROLYN FIELDS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. G-02-CV-529  
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Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Jay Brent Vineyard, Texas inmate # 1027912, appeals the dismissal of his civil rights complaint for failure to comply with the district court's order that he pay an initial partial filing fee of \$2.60. Vineyard offers no reason on appeal for why he refused to comply with the court's order to pay the filing fee. The district court did not abuse its discretion in dismissing his complaint under FED. R. CIV. P. 41(b). McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Vineyard's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his appeal is DISMISSED. See 5TH CIR. R. 42.2.

Vineyard is cautioned that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Vineyard is also cautioned that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to proceed in forma pauperis (IFP) in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).