

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8829  
Conference Calendar

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DARRYL WAYNE BELL,

Plaintiff-Appellant,

versus

PHILLIP H. ZEIGLER,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CV-392  
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

An in forma pauperis complaint may be dismissed as frivolous if it lacks as arguable basis in law or fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). We review the dismissal for abuse of discretion. Id., 112 S.Ct. at 1734. Bell does not challenge the district court's analysis concerning the defendant's absolute immunity. Therefore, this issue is deemed abandoned on appeal. See Eason v. Thaler, 14 F.3d 8, 9 n.1 (5th Cir. 1994).

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Bell challenges the district court's failure to exercise its equitable jurisdiction. Bell at no time identifies what specific equitable relief he wants. Assuming he wants the district court to order the defendant to adjudicate Bell's pending case, such a request would amount to a mandamus against a state official to perform his duty, a remedy not authorized by 42 U.S.C. § 1983. See Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973).

Bell argues that the district court should have given him notice and opportunity to respond before dismissing his complaint. A 28 U.S.C. § 1915(d) dismissal does not provide such procedural protections. Graves v. Hampton, 1 F.3d 315, 318 n.12 (5th Cir. 1993). Moreover, utilizing established vehicles to remedy an inadequate pleading is unnecessary if "the legal theory upon which a complaint relies is `indisputably meritless.'" Eason, 14 F.3d at 9 n.5. Therefore, the district court did not abuse its discretion in dismissing the complaint under § 1915(d).

Because Bell fails to raise an appellate issue of arguable merit, we DISMISS the appeal as frivolous. 5th Cir. R. 42.2. We note that the district court admonished Bell that frivolous filings in the future will be subject to sanctions. That warning applies as well to appellate filings.