

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50358
Summary Calendar

DARRYL WAYNE BELL,

Plaintiff-Appellant,

versus

J. DOREMAN, CO3, Hughes Unit,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CA-39

(August 15, 1994)

Before GARWOOD, JOLLY and PARKER, Circuit Judges.

PER CURIAM:*

Darryl Wayne Bell moves this Court for leave to proceed on appeal in forma pauperis (IFP). "To proceed on appeal [IFP], a litigant must be economically eligible, and his appeal must not be frivolous." Jackson v. Dallas Police Dep't, 811 F.3d 260, 261 (5th Cir. 1986).

Bell contends that the dismissal, without prejudice, pursuant to Fed. R. Civ. P. 41(b) was improper because he "did

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

everything required." "The standard of review for a Rule 41(b) dismissal is whether the district court abused its discretion in dismissing the action." McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). The magistrate judge gave Bell two chances to comply with the order to amend his complaint by adding specific facts, and the magistrate judge warned Bell of the consequences of failure to comply fully. Bell responded with the reiteration of generalized, conclusional allegations. Bell contends that the magistrate judge's orders were too vague and ambiguous for Bell to comprehend what needed to be added to the complaint. The wording of the orders belie this contention. Further, the facts as alleged by Bell on appeal include detail and specificity which Bell failed to provide in the district court. In light of the record, the district court did not abuse its discretion in dismissing without prejudice under Rule 41(b). See McCullough, 835 F.2d at 1127.

Bell challenges the district court's dismissal for frivolousness under 28 U.S.C. § 1915(d). An IFP complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, ___ U.S. ___, 112 S. Ct. 1728, 1733, 118 L. Ed. 2d 340 (1992). This Court reviews the dismissal for abuse of discretion. Id., 112 S. Ct. at 1734.

Dismissal is appropriate when the plaintiff has been given the opportunity to expound upon the facts, but has not presented facts beyond conclusional allegations. See Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993); Whittington v. Lynaugh, 842 F.3d 818, 819-21 (5th Cir. 1987), cert. denied, 488 U.S. 840 (1988).

Bell was given two opportunities to provide the factual details supporting his claims of retaliation, discrimination, assault, bias, deprivation of property, and the like, and he failed to do so. To the extent that Bell's terse, conclusional facts could be liberally construed as alleging possible deprivations of federal rights, these claims were properly dismissed by the district court under Rule 41(b).

Bell argues that the magistrate judge and the district court have displayed judicial bias and prejudice against him. Adverse rulings against a litigant and acknowledgement of prior proceedings involving the same litigant are neither grounds for recusal nor support for charges of bias and prejudice. See Liteky v. United States, ___ U.S. ___, 114 S. Ct. 1147, 1155, 127 L. Ed. 2d 474 (1994). The argument is not supported by the record and is frivolous.

Bell challenges the order of sanction by the district court. "[R]eview of a district court's sanctions against vexatious or harassing litigants is conducted under the abuse of discretion standard." Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993). In recommending sanction, the magistrate judge relied on Bell's history of frivolous litigation. He also noted that Bell's lack of cooperation with the court's orders in this case was not the first time Bell had behaved this way. The district court noted that sanction was recommended for Bell's "continued frivolous filings and contumacious conduct." This Court is aware that Bell had been warned of possible sanction by the district court in a prior suit. See Bell v. Zeigler, No. 93-8829 (5th

Cir. May 19, 1994) (unpublished). Under these circumstances, a sanction did not amount to an abuse of discretion. See Gelabert v. Lynaugh, 894 F.2d 746, 747-48 (5th Cir. 1990). In light of Bell's contumacious conduct in responding to the orders to amend his complaint with facts, facts which Bell partially provides on appeal, the issue of sanction is frivolous.

Bell's argument, that the district court failed to consider lesser sanction, was not presented to the district court. Bell was expressly ordered to show cause in writing why the recommended sanction should not be imposed, and he failed to raise this issue or to mention the propriety of the specific recommended sanction. This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Because the appeal does not involve legal points of arguable merit, see Jackson, 811 F.2d at 261, the appeal is DISMISSED as frivolous. 5th Cir. R. 42.2. Bell's motion for leave to proceed IFP is DENIED.

In Bell v. Zeigler, No. 93-8829 (5th Cir. May 19, 1994) (unpublished), we warned Bell concerning the consequences of frivolous appellate filings. Nevertheless, Bell moved for IFP and filed an appellate brief. We impose a monetary sanction of \$25. Until Bell pays the Clerk of this Court the entire \$25 monetary sanction imposed, Bell will not be permitted to file any

further pleadings, either in the district courts of this Circuit or in this Court, without obtaining leave of court to do so. If Bell has any other appeals pending in this Court at this time, he should review them in light of the foregoing sanction and move to withdraw any appeal that is frivolous. See Fed. R. App. P. 38.

APPEAL DISMISSED. MOTION DENIED. SANCTION IMPOSED.