

United States Court of Appeals
for the Fifth Circuit

No. 21-51040
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 3, 2023

Lyle W. Cayce
Clerk

ROBERTO CARLOS MENDIVES, SUI JURIS, and *on behalf of his four
minor children*, R.C.M. II, M.A.M., G.L.M., E.F.M., (*minor
children*),

Plaintiff—Appellant,

versus

BEXAR COUNTY, *et al.*; STATE OF TEXAS, *et al.*; ANGELA ROSE
WOOTEN, (*in err*); DEPARTMENT OF HEALTH AND HUMAN
SERVICES, *o/b/o*; DEPARTMENT OF JUSTICE, *o/b/o*; ATTORNEY
VELIA JUDITH MEZA,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-356

Before CLEMENT, SOUTHWICK, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Roberto Carlos Mendives moves for leave to proceed in forma pauperis (IFP) in this appeal from a judgment dismissing his lawsuit as frivolous or malicious under 28 U.S.C. § 1915(e)(2)(B)(i). We review the district court's dismissal under § 1915(e)(2)(B)(i) for an abuse of discretion. *See Shakouri v. Davis*, 923 F.3d 407, 410 (5th Cir. 2019); *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005). By moving to proceed IFP on appeal, Mendives has challenged the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into whether the appeal is taken in good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (cleaned up).

An action may be dismissed as frivolous or malicious if it duplicates claims raised by the same plaintiff in a previous or pending litigation. *See Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993); *Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). The district court noted that Mendives's lawsuit was duplicative of five federal actions he had previously filed and found that the lawsuit was frivolous and malicious on this basis. Mendives has not shown that he will raise a nonfrivolous issue regarding the dismissal of his complaint for purposes of § 1915(e)(2)(B)(i). *See Pittman*, 980 F.2d at 994-95; *Wilson*, 878 F.2d at 850; *Bailey*, 846 F.2d at 1021.

Because Mendives has not shown that he will raise a nonfrivolous issue on appeal, his motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; *Howard*, 707 F.2d at 220; 5TH CIR. R. 42.2. Mendives's motion to expedite his appeal is DENIED as moot. Finally, his motion for judicial notice and all other outstanding motions are DENIED.