

United States Court of Appeals for the Fifth Circuit

No. 25-11395
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2026

Thomas B. Plunkett, III
Clerk

ERIC ELLIS,

Plaintiff—Appellant,

versus

BEN E. KEITH COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-234

Before GRAVES, HIGGINSON, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Eric Ellis, proceeding pro se, moves for leave to proceed in forma pauperis (IFP) in this appeal of the district court's (i) order and judgment dismissing his federal claims and remanding his state law claims to state court and (ii) order denying his postjudgment motions under Federal Rule of Civil Procedure 59(e). Ellis's IFP motion is a challenge to the district court's certification that any appeal would not be taken in good faith because Ellis

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

will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Shortly after the defendant, Ben E. Keith Company (BEK), removed this case from state court, Ellis filed his first amended complaint. Thereafter, BEK filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Ellis then filed two second amended complaints. The magistrate judge (MJ) entered separate orders respectively striking Ellis's second amended complaints on the ground that he failed to obtain BEK's consent or the district court's leave under Federal Rule of Civil Procedure 15(a)(2). Over four months later, Ellis filed objections to the MJ's orders striking his second amended complaints.

Most of the arguments that Ellis raises in his IFP brief are based on the faulty premise that his second amended complaint was the "operative complaint" in the case. However, Ellis's second amended complaint was not his "operative complaint" because it was twice stricken by the MJ, leaving his first amended complaint as his "operative complaint." As to his arguments that the MJ erred or exceeded his authority in striking his second amended complaint, Ellis's failure to timely appeal the MJ's orders striking his second amended complaint to the district court is fatal to his claim because it deprives this court of jurisdiction. *See United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980); *see also* FED. R. CIV. P. 72(a). Because this court lacks jurisdiction to review the MJ's orders, the appeal is DISMISSED in part for lack of jurisdiction.

In his remaining arguments, Ellis contends that (i) the district court failed to rule on his motion for a default judgment under Federal Rule of Civil Procedure 55; (ii) the district court erred in striking his application to proceed IFP on appeal based on his failure to satisfy the \$250 sanction imposed by the court; (iii) the district court's order dismissing his federal claims and

remanding his state claims to state court was procedurally defective; (iv) the district court erred in imposing the \$250 sanction based on his vexatious litigation conduct; and (v) the district court erred in striking his motion for recusal of the district court judge.

Ellis fails to make the requisite showing that he will present a nonfrivolous issue for appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his motion to proceed IFP is DENIED, and his appeal is DISMISSED in part as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.