

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-30875
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 2, 2015

Lyle W. Cayce
Clerk

MICHAEL COOPER,

Plaintiff-Appellant

v.

NICOLE WALKER; MONA HEYSE; MARK DAVIS; J. TIM MORGAN,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:13-CV-3209

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Michael Cooper, Louisiana prisoner # 391434, appeals the dismissal of this 42 U.S.C. § 1983 action. The district court dismissed the action as frivolous and for failure to state a claim. Because the district court cited both 28 U.S.C. § 1915 and 28 U.S.C. § 1915A as authority for its dismissal, our review is de novo. *See Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Cooper fails to address the district court's determination that no claim is stated in his complaint because his mere disagreement with medical officials' treatment plan is not actionable. Additionally, Cooper fails to address the district court's conclusion that he presented no factual allegations that would show that the defendants knew of an excessive risk to his health or safety but nevertheless chose to disregard that risk. Because Cooper's brief is inadequate as to those claims, we dismiss them as frivolous. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Cooper's claim of negligence and carelessness is an attempt to advance an "indisputably meritless legal theory" and is thus frivolous. *Taylor v. Johnson*, 257 F.3d 470, 472 (5th Cir. 2001); *Stewart v. Murphy*, 174 F.3d 530, 534 (5th Cir. 1999); *Howard*, 707 F.2d at 220.

We dismiss this frivolous appeal sua sponte. *See* 5TH CIR. R. 42.2. The dismissal of his complaint by the district court and the dismissal of this appeal as frivolous each counts as a strike under § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Cooper is WARNED that if he receives a third strike he will not be allowed to proceed in forma pauperis in any civil action or appeal while he is incarcerated or detained in any facility unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Cooper's requested for the appointment of counsel on appeal is DENIED.

APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.