

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 8, 2025

Lyle W. Cayce
Clerk

No. 24-10500
Summary Calendar

BRADLEY B. MILLER,

Plaintiff—Appellant,

versus

VIRGINIA TALLEY DUNN, *Individually*; ANDREA PLUMLEE, *In both Individual and Official Capacities*; DANIELLE DIAZ, *In both Individual and Official Capacities*; PATRICIA LINEHAN ROCHELLE, *In both Individual and Official Capacities*; DAVID H. FINDLEY, *In both Individual and Official Capacities*; MARYANN MIHALOPOULOS, *In both Individual and Official Capacities, also known as Maryann Brousseau*; HOCKADAY SCHOOL, *By and Through Its Board of Trustees*; MEREDITH LEYENDECKER, *Individually*; BETH TAYLOR, *Individually*; JOHN SUGHRUE, *Individually*; LACIE DARNELL, *In both Individual and Official Capacities*; MICHAEL CHARLES KELLER, *In both Individual and Official Capacities*; COUNTY OF DALLAS, TEXAS; CITY OF DALLAS, TEXAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CV-759

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Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Bradley B. Miller moves for leave to proceed in forma pauperis (IFP) from the district court's dismissal of his civil action against numerous defendants. The district dismissed Miller's complaint after concluding that he had failed to state a federal claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). In addition, the district court declined to exercise supplemental jurisdiction over Miller's state claims and denied his motion to amend his complaint and his Federal Rule of Civil Procedure 59(e) motion. To proceed IFP, a litigant must demonstrate both financial eligibility and a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982); *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

In his complaint, Miller alleged that various defendants had violated federal criminal statutes. The magistrate judge concluded that, to the extent that Miller was seeking to enforce those statutes, he lacked standing to institute criminal proceedings. In addition, the magistrate judge also found that the statutes cited by Miller did not give rise to private causes of action. Miller argues that, as he contended in his motion to amend, he was not seeking to enforce the criminal statutes but was instead alleging torts arising from the defendants' violation of the statutes. He has not shown that he was entitled to raise a private cause of action based on the defendants' commission of federal crimes. *See, e.g., Napper v. Anderson, Henley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974); *Hanna v. Home Ins. Co.*, 281 F.2d 298, 303 (5th Cir. 1960).

Miller contends that the state court judges and attorneys were not entitled to immunity from suit based on orders issued in a family law

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

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proceeding while he had removed the case to federal court. As the state family court had “some subject-matter jurisdiction” over the proceedings at issue, “there [was] sufficient jurisdiction for [judicial] immunity purposes.” *Adams v. McIlhany*, 764 F.2d 294, 298 (5th Cir. 1985). The Texas ultra vires principle does not preclude the application of sovereign immunity to Miller’s claims for past damages against the judges in their official capacities. *Diaz v. Cantu*, 123 F.4th 736, 744 (5th Cir. 2024). Under 42 U.S.C. § 1983, Miller may not obtain future injunctive relief against a judicial officer because he has not shown that declaratory relief was unavailable. *See, e.g., Holloway v. Walker*, 784 F.2d 1287, 1292-93 (5th Cir. 1986). Although Miller argues that he may obtain attorney’s fees, he is not represented by counsel. *See, e.g., Kay v. Ehrler*, 499 U.S. 432, 435 (1991) (stating that pro se litigants may not recover attorney fees under 42 U.S.C. § 1988). Finally, even if the attorneys representing Miller’s ex-wife engaged in criminal conduct to have orders signed while the proceedings were removed to federal court, Miller has not shown that their actions were outside the scope of their representation of their client and thus was not covered by the Texas doctrine of attorney immunity. *See Troice v. Greenberg Traurig, L.L.P.*, 921 F.3d 501, 506-07 (5th Cir. 2019).

In addition, the district court dismissed Miller’s allegations against two Dallas police officers on the basis of limitations. His claims against the officers involved a single event where they ordered him to leave an art fair in April 2015, and the continuing tort doctrine does not apply. *See Gen. Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 451 (5th Cir. 2007). In addition, Miller has not shown that he pursued his rights diligently against the officers or that he was actively misled or prevented in an extraordinary way from asserting his claims against them. *See Hand v. Stevens Transp., Inc. Empl. Benefit Plan*, 83 S.W.3d 286, 293 (Tex. App. 2002).

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Miller maintains that the district court erred in dismissing his claims of municipal liability. His allegations that the City of Dallas was responsible for failing to train the two police officers did not identify a policy or a city policymaker. *See Hicks-Fields v. Harris Cnty.*, 860 F.3d 803, 808 (5th Cir. 2017); *Bennett v. City of Slidell*, 728 F.2d 762, 768 n.3 (5th Cir. 1984). Although Miller contends that policymakers ratified the officers' actions by failing to sanction them, he has not shown that the officers' actions were an "extreme factual situation[]" supporting the ratification theory. *Peterson v. City of Fort Worth*, 588 F.3d 838, 848 (5th Cir. 2009). Miller's examples of egregious actions by Dallas police officers are factually distinguishable from his own situation and do not support his allegations of municipal liability on behalf of the City. As for his claims against Dallas County, Miller appears to concede that the state district judge is not a county employee, but he argues that the associate judge is employed by the county. Even assuming that he is correct in this assertion, Miller has not identified a county policymaker or policy, and he does not allege that county officials ratified the associate judge's actions. *See Hicks-Fields*, 860 F.3d at 808; *Sligh v. City of Conroe*, 87 F.4th 290, 303 (5th Cir. 2023).

The district court dismissed Miller's claims against the defendants who were not judges or police officers because Miller had failed to allege the required state action for § 1983. Miller contends that the attorneys acted jointly with the state judges by presenting illegal orders for the state judges to sign while the state case was removed to federal court. As noted above, the attorneys are immune from suit. *See Troice*, 921 F.3d at 505-07. Miller also asserts that his ex-wife participated with the attorneys and judges in a civil conspiracy to create the fraudulent orders. His conclusional assertions are insufficient to allege a conspiracy. *See Cinel v. Connick*, 15 F.3d 1338, 1343-44 (5th Cir. 1994).

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After the magistrate judge issued his initial report, Miller moved to amend his complaint to add claims pursuant to 42 U.S.C. §§ 1981, 1985, and 1986. The district court denied his motion, concluding that any amendment would be futile. *See Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 245 (5th Cir. 1997). Miller has not challenged the conclusion that he failed to raise a claim under § 1981, and any such allegation is abandoned. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). With respect to his allegations of a conspiracy to deprive him of equal protection of the laws, contrary to his assertions, the court did not state that a public actor was required for a claim under § 1985(3). Additionally, the district court properly concluded that a claim under § 1985(3) involving an equal protection violation required proof that the conspiracy was motivated by a class-based, invidiously discriminatory animus. *See Williams v. Bramer*, 180 F.3d 699, 705 (5th Cir. 1999); *Miss. Women's Med. Clinic v. McMillan*, 866 F.2d 788, 793 (5th Cir. 1989). Miller has not shown that the district court abused its discretion in denying his motion to amend. *See* FED. R. CIV. P. 15(a)(2); *Lowrey*, 117 F.3d at 245.

Miller contends that the district court erred in denying his motion for recusal. Neither the judge's adverse rulings in this or other cases nor any statements that Miller construed as insulting in prior proceedings are sufficient to show judicial bias. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994). His conclusional assertions regarding the district court judge's social and philanthropic memberships do not raise those rulings to the level of bias, and his speculation that she may have known some of the defendants through those organizations does not show that she was required to disclose her memberships. *See id.*; *cf. In re Faulkner*, 856 F.2d 716, 720 (5th Cir. 1988) (noting that the district court sua sponte disclosed he was related to an individual who had been a participant in events giving rise to a criminal indictment). Miller has not shown that the district court abused its discretion

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in denying his recusal motion. *See United States v. Mizell*, 88 F.3d 288, 299 (5th Cir. 1996).

Miller has not shown show that the district court erred in dismissing his federal claims. *See Black v. Warren*, 134 F.3d 732, 734 (5th Cir. 1998). As his federal claims were dismissed, the district court did not abuse its discretion by declining to exercise supplemental jurisdiction over his state-law claims. *See United Mine Workers of Amer. v. Gibbs*, 383 U.S. 715, 726 (1966); *Batiste v. Island Records Inc.*, 179 F.3d 217, 226 (5th Cir. 1999).

The appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Miller's motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED. *See Baugh*, 117 F.3d at 202 & n.24.; 5TH CIR. R. 42.2.