

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5768
Conference Calendar

OMAR KIRK,

Plaintiff-Appellant,

versus

STATE OF TEXAS and
INSURANCE INDUSTRY,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CV-962

(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

BY THE COURT:

Omar Kirk seeks to proceed in forma pauperis (IFP) in the appeal of the denial of his civil rights complaint pursuant to 28 U.S.C. § 1915(d). To prevail, Kirk must demonstrate that he is a pauper and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

A district court may dismiss a pauper's complaint as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)). A district court's § 1915 (d) dismissal is reviewed for an abuse of discretion. Id. at 1734.

The Eleventh Amendment bars suits against a state for alleged deprivations of civil liberties, unless the state has waived sovereign immunity. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Kirk's suit against the State of Texas is barred by the Eleventh Amendment. Additionally, the record does not support Kirk's allegation that he named Beauchamp or his insurance company as defendants. Therefore, the district court did not abuse its discretion when it dismissed Kirk's complaint as frivolous.

Kirk's motion for IFP is DENIED because he raises no nonfrivolous issue on appeal. Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.