

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Number: 05-17-90130

U. S. COURT OF APPEALS
FILED

OCT 25 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a *pro se* litigant, alleges that during an August 2016 hearing, the subject United States District Judge asked repetitive questions about her claims and “made up his own responses,” told irrelevant anecdotes, told her that “illegals have the same rights you do,” and “attacked [her] character” by asking her about her conduct towards the defendants and about her litigation history. She protests that the judge’s conduct in subjecting her to “verbal assaults, false accusations, inquisitions” constituted an “abuse of authority, position, power, misuse of taxpayer blood, sweat, tears for his dictatorship: in a pattern of intimidation without proof ... VOIDING common law, common sense!”

Contrary to complainant’s claims, a review of the audio-recording of the hearing shows that the judge did not attack her character, “intimidate,” or “verbally assault” her. While the judge occasionally raised his voice, he did so only when complainant talked over him or gave non-responsive answers to his questions. It is also clear that the judge’s purportedly “irrelevant” personal and historical anecdotes were offered either in response to complainant’s arguments or to explain why the judge found that she had failed to state a claim upon which the court could grant relief. Overall, the judge maintained his composure and patience in the face of an excitable litigant who raised her voice countless times, argued vociferously that she knew the law and the facts better than the judge and, at one point, commented that if she were raped by the “illegals” coming onto her property, the judge would be responsible.

To the extent, if any, that the allegations relate directly to the merits of the judge’s decision to dismiss the lawsuit with prejudice and to deny complainant’s motions for a

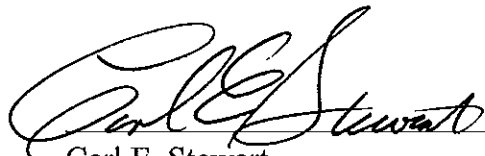
temporary restraining order of permanent injunction, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

To the extent that the judge occasionally expressed exasperation when complainant gave non-responsive answers or argued that she knew the law better than the judge, the Supreme Court of the United States has held that judicial bias is not established by a judge's "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune." Liteky v. U.S., 510 U.S. 540, 555-556 (1994). The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In other respects, the judge's questions about complainant's conduct towards the defendants and about her litigation history does not constitute evidence of bias. The Supreme Court of the United States has held that "[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards [a party] ... But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings ...". Liteky, 510 U.S. 540 at 551. The allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge

October 23, 2017