

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

United States Court of Appeals
Fifth Circuit

FILED

May 11, 2010

Lyle W. Cayce
Clerk

No. 09-20558

Summary Calendar

KAREN WILLIAMSON,

Plaintiff-Appellant

v.

JOE WALKER,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CV-1399

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Karen Williamson, proceeding pro se and in forma pauperis (IFP), appeals the district court's dismissal of her miscellaneous civil action against Joe Walker without prejudice for failure to comply with the court's order to file a more definite statement. Williamson argues that the district court abused its discretion in dismissing her complaint because her complaint was sufficient to communicate her desire to get her file from her former attorney.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court's dismissal was without prejudice, and there is insufficient information in the record to determine whether Williamson's claim would be barred by a statute of limitations. A dismissal without prejudice is not an abuse of discretion in this case. *See* FED. R. CIV. P. 41(b); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988).

Even if the dismissal is considered to be with prejudice, Williamson's actions in refusing to comply with the district court's order and filing repeated objections insisting that her complaint was sufficient and making disparaging remarks about the defendant, his attorney, and the district court judge constitute a clear record of contumacious conduct warranting dismissal. *See Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992).

Williamson's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. *See* 5TH CIR. R. 42.2.

The appellee argues that Williamson's appeal is frivolous and asks this court to award damages and costs pursuant to Federal Rule of Appellate Procedure 38. Because the appellee did not file a separate motion, we cannot rule on the request at this time. Appellee's request for sanctions is DENIED WITHOUT PREJUDICE pending the show cause order we issue herein. *See* FED. R. APP. P. 38.

Based on Williamson's frivolous appeal in this case, and based on her lengthy history of initiating vexatious litigation in the federal district courts and in this court, which she has repeatedly failed to prosecute, Williamson is hereby ORDERED TO SHOW CAUSE why sanctions under Federal Rule of Appellate Procedure 38, our inherent power, or any other source of applicable law for filing frivolous appeals should not be imposed. Williamson is ordered to file with the Clerk of this court, within fifteen (15) days after the filing of this opinion, a statement, not to exceed thirty (30) pages, stating her reasons why we should not impose sanctions. Appellee Walker is invited to submit, within the same time

period, a sworn list of attorneys' fees incurred in connection with the instant appeal, detailing the reasonable hours expended by counsel and reasonable hourly rates charged, plus other direct costs incurred as appellee.

APPEAL DISMISSED AS FRIVOLOUS; APPELLANT ORDERED TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED; APPELLEE'S REQUEST FOR DAMAGES DENIED WITHOUT PREJUDICE AND APPELLEE INVITED TO SUBMIT EVIDENCE OF DAMAGES.