

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2022

Lyle W. Cayce
Clerk

No. 21-40546

TIM BRANDT,

Plaintiff—Appellant,

versus

PEGODA, *ATC Supervisor,*

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:20-CV-211

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

PER CURIAM:*

Tim Brandt, Texas prisoner # 1880044, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal from the order dismissing as moot his motion for a temporary restraining order or for a preliminary injunction, which the district court also construed as an action under 42 U.S.C. § 1983. In his motion and complaint, he alleged that he was denied access to the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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courts because he was unable to file a class action suit on behalf of prisoners related to the alleged denial of their ability to make child support payments. Brandt asserted that his ability to mail the suit as a single filing rather than as a piecemeal submission was being frustrated. The district court denied his IFP motion and certified that his appeal was not in good faith.

By moving to proceed IFP, Brandt is challenging the district court's certification decision. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

On appeal, Brandt addresses only whether he is financially eligible to proceed IFP and discusses his indigence. He vaguely alludes to his access-to-the-courts claim and the class action suit underlying that claim but presents no meaningful argument challenging the finding that his claim was moot in light of the mailing of the suit in a single filing. Because Brandt briefs no argument addressing the district court's analysis of his claims and fails to identify any error therein, he has abandoned a challenge to the certification decision and to the district court's treatment and disposition of his filings. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, the motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915. *See* § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th

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Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Brandt is WARNED that if he accumulates three strikes, he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).