

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 13, 2022*
Decided December 14, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1991

ROBERT E. SPIKER,
Plaintiff-Appellant,

v.

ROBERT E. ERSKINES, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Western Division.

No. 22 C 50053

Iain D. Johnston,
Judge.

ORDER

Melissa Spiker, a transgender woman whose legal name is Robert Spiker, sued correctional officers at her federal prison under *Bivens v. Six Unknown Named Agents of*

* Appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging that they beat her and did not provide medical treatment for her injuries. The district court dismissed her case with prejudice as a sanction after determining that Spiker had fraudulently omitted her litigation history from her application to proceed in forma pauperis. We affirm.

The allegations in the complaint were never tested, so we recount them without vouching for them. According to Spiker, seven correctional officers beat her by kicking and punching her in the ribs, back, head, and neck, while an eighth officer struck her repeatedly with a metal rod, breaking five of her ribs. After the beating, the officers left her in a restraint chair for 20 hours without food, water, or access to a bathroom. Then, for more than two months, medical staff ignored her requests for them to treat her broken ribs, and two administrators ignored her grievances.

Spiker sued these federal employees under *Bivens*, using the court-provided form for prisoner complaints. This requires plaintiffs to list details about “ALL lawsuits” that they have filed “in any state or federal court in the United States.” The form also warns, in all capital letters (omitted here for readability): “Regardless of how many cases you have previously filed, you will not be excused from filling out this section completely, and failure to do so may result in dismissal of your case.” In this section, Spiker gave partial information about two previous lawsuits. Along with the complaint, she submitted a request for leave to proceed in forma pauperis.

Of its own accord, the district court ordered Spiker to “show cause (explain in writing) under penalty of perjury as to why she should not be sanctioned, up to and including dismissal of this case with prejudice, for failure to accurately disclose her litigation history in her original complaint.” The court listed five civil rights cases that she had not disclosed, including one in which she had been warned of the necessity of disclosing previous lawsuits and one that was dismissed as frivolous. The court also highlighted a case in the Middle District of Florida that was dismissed with prejudice because of Spiker’s false statements. There, Spiker had sent a “disturbing letter to the Court” stating that seven of her civil actions were “based upon lies ... to cause the defendants undue harassment, loss of finances, and to be dismissed from employment” and admitting that she had “resorted to perjury,” which was “fun.” For this, Spiker was later charged with perjury (though ultimately not prosecuted). The district court also referred to, without listing, seven omitted “habeas/§ 2255 cases” in Spiker’s history.

In response, Spiker asserted that she did not list her other lawsuits because she did not remember them and could not obtain the necessary information in prison. She

also explained that she did not think she was obligated to list the cases in which she had admitted lying because the perjury charge had been dropped. Spiker then amended her complaint, this time listing seven civil suits (adding the five suits that the district court had identified) on the form's litigation-history section.

Unpersuaded by Spiker's explanation, the district court dismissed the case with prejudice as a sanction for not disclosing her litigation history in the original complaint. The court explained that she could have disclosed the cases to the best of her recollection even without access to her records. At the least, the court noted, Spiker would have remembered the case in which her misconduct led to criminal charges. Further, though Spiker had just one strike under the Prison Litigation Reform Act for a frivolous suit, the omission of information about her "repeated abuse of process" was material to how the court would view her request to proceed in forma pauperis. The court concluded that less severe sanctions than dismissal were inappropriate because Spiker could not pay a fine, and the opportunity to re-file would not convey a serious enough message that Spiker must be forthright with the court.

After the judgment, Spiker filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e). She asserted that she did not intend to defraud the court and that the omissions in her case history were caused by her inexperience with the law. She also repeated that she did not remember each of her cases and could not access information about them in the legal databases available in her prison.

The court denied Spiker's motion. It determined that she had not raised a new argument and stood by its inference that Spiker was familiar with the requirement to disclose because she had been warned before and had even been prosecuted based on her actions in another case she claimed to have forgotten. The court concluded: "If Plaintiff thought that mitigating circumstances existed such that she should be allowed to proceed without pre-payment of the filing fee despite her history of litigation misconduct, she was obligated to be upfront with the Court in making that request."

Spiker appeals, asking us to focus on the merit of her claims rather than her failure to disclose her previous cases. She repeats her contention that she could not provide a complete history because she lacked counsel and access to her legal records.

When exercising their inherent sanctioning powers, which extend to dismissing a lawsuit for fraud on the court, courts must support their choice of sanction with factual findings. *Greyer v. Ill. Dep't of Corr.*, 933 F.3d 871, 876–77 (7th Cir. 2019). To find fraud, a

court needs to conclude that the deception was intentional and material. *Id.* at 881. Before dismissing, the court must also consider whether a lesser sanction is appropriate. *Id.* at 877. We review the court's factual findings for clear error and its choice of sanction for abuse of discretion. *Sanders v. Melvin*, 25 F.4th 475, 480 (7th Cir. 2022).

Here, the district court made the requisite findings, and they are not clearly erroneous. First, the court determined that Spiker's fraud was "an intentional attempt to conceal her history of litigation misconduct." Her omissions were not a mistake, the court explained, because the complaint form expressly required her to include her entire litigation history, and she had a prior lawsuit dismissed for failure to disclose. Thus, she would have understood her obligation to the court even though she lacked counsel. *Cf. Greyer*, 933 F.3d at 878 (dismissal with prejudice an abuse of discretion because plaintiff likely did not understand what was required).

Second, the court found that Spiker's omissions were material. It did not believe that Spiker's full history would have barred her from proceeding in forma pauperis under the "three-strikes" rule in 28 U.S.C. § 1915(g). Nevertheless, Spiker's "history of wasting judicial time and resources," was relevant to whether it would allow her to proceed in forma pauperis. Judges have discretion in granting pauper status, see *Campbell v. Clarke*, 481 F.3d 967, 969 (7th Cir. 2007), and Spiker has provided no reason why her litigation history could not be material to the court's exercise of that discretion.

Finally, dismissal with prejudice was an appropriate sanction. The court decided that a monetary penalty would be ineffective because Spiker would be unable to pay, that a warning would be insufficient because Spiker had not heeded prior ones, and that no other sanction was available. These are appropriate grounds for dismissing a case with prejudice. See *Hoskins v. Dart*, 633 F.3d 541, 544 (7th Cir. 2011). But *cf. Williams v. Adams*, 660 F.3d 263, 265 (7th Cir. 2011) (explaining that inability to pay a fine does not automatically justify dismissal). The district court did not abuse its discretion by responding to severe misconduct with a severe sanction. See *Martin v. Redden*, 34 F.4th 564, 568 (7th Cir. 2022).

Accordingly, we AFFIRM the judgment. Spiker's pending motions (1) to file an affidavit, (2) for summary judgment, (3) "for order deciding appeal in favor of plaintiff-appellant," and (4) for a status update are DENIED.