

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-20282

ANNAMALAI ANNAMALAI,

Plaintiff - Appellant

v.

PARVATHI SIVANADIYAN,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas

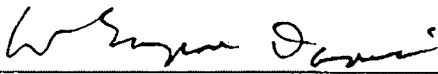
ON PETITION FOR REHEARING

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the joint petition for rehearing is *denied*.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

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

No. 17-20282
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 6, 2018

Lyle W. Cayce
Clerk

ANNAMALAI ANNAMALAI,

Plaintiff – Appellant

v.

PARVATHI SIVANADIYAN,

Defendant – Appellee.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-25

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Annamalai Annamalai (“Annamalai”), proceeding pro se and in forma pauperis (“IFP”), filed a complaint and arbitration demand in the district court pursuant to 9 U.S.C. § 4 seeking to compel Parvathi Sivanadiyan (“Sivanadiyan”) to arbitrate a dispute on an allegedly defaulted obligation to pay Annamalai \$10,000 a week as long as he should live and thereafter to his daughter for her life. The district court dismissed the complaint as malicious

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-20282

under 28 U.S.C. § 1915(e)(2)(B)(i), concluding that it was duplicative of a lawsuit previously filed in the Southern District of Indiana against Sivanadiyan.¹ Additionally, pursuant to § 1915(g), the district court revoked Annamalai's IFP status, citing five civil actions filed by Annamalai in various federal courts that have been dismissed as frivolous or malicious.² Further, after surveying Annamalai's remarkably litigious history, the district court imposed \$100 in sanctions and warned Annamalai that the filing of other vexatious or frivolous motions or pleadings would result in additional sanctions. Annamalai thereafter filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), which the district court promptly denied, imposing further sanctions in the amount of \$500. Annamalai timely appealed. We review a dismissal under § 1915(e)(2)(B)(i) for abuse of discretion,³ and a denial of a Rule 59(e) motion under the same standard.⁴

On appeal, Annamalai contends that the district court was required to enter final judgment pursuant to Federal Rule of Civil Procedure 68 because Sivanadiyan had made an offer of judgment. However, we do not reach his substantive argument. Because Annamalai appeared IFP in the district court, the district court was obligated to "dismiss the case at any time" if it determined that the action or appeal was "frivolous or malicious."⁵ In *Pittman v. Moore*, we held that a district court may dismiss a lawsuit as "malicious" if the suit "duplicates allegations of another pending federal lawsuit by the same

¹ See *Annamalai v. Sivanadiyan*, 1:16-cv-03415-WTL-DKL (S.D. Ind. Mar. 20, 2017).

² These include: (1) *Annamalai v. Rajkumar*, No. 16-cv-4491 (S.D.N.Y. June 15, 2016); (2) *Annamalai v. Reynolds*, No. 1:16-cv-1373 (N.D. Ga. July 8, 2016); (3) *Annamalai v. Paramasivam*, No. 1:16-cv-6079 (N.D. Ill. July 13, 2016); (4) *Annamalai v. United States*, No. 16-815 (Fed. Cl. July 22, 2016); and (5) *Annamalai v. United States*, No. 16-816 (Fed. Cl. July 19, 2016).

³ *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988).

⁴ *Edward H. Bohlin Co. v. Banning Co., Inc.*, 6 F.3d 350, 353 (5th Cir. 1993).

⁵ 28 U.S.C. § 1915(e)(2)(B)(i).

No. 17-20282

plaintiff.”⁶ Because Annamalai filed a nearly-identical suit in another forum before filing his suit in the district court,⁷ the district court did not abuse its discretion either in dismissing the complaint as malicious or in denying Annamalai’s Rule 59(e) motion as frivolous.⁸

An appeal may be frivolous “if the result is obvious or the arguments of error are wholly without merit.”⁹ Annamalai has been warned by the district court below and in multiple other forums that frivolous filings and complaints may result in monetary sanctions.¹⁰ Indeed, he has been sanctioned extensively.¹¹ Nevertheless, Annamalai persists in filing a deluge of meritless actions in this circuit and others; accordingly, we impose an additional monetary sanction of \$500 for filing this appeal.

For these reasons, we AFFIRM the opinion of the district court.

⁶ 980 F.2d 994, 995 (5th Cir. 1993).

⁷ He argues below in his Rule 59(e) motion that he voluntarily withdrew his suit in the Southern District of Indiana the day before the district court issued its final judgment by virtue of the mailbox rule, though the withdrawal was not filed until more than a month later. However, as he fails to brief this argument on appeal, we consider this felicitous argument waived. See *Ocwen Loan Servicing, L.L.C. v. Berry*, 852 F.3d 469, 472 (5th Cir. 2017).

⁸ See *Pittman*, 980 F.2d at 995.

⁹ *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988).

¹⁰ See, e.g., *Annamalai v. Seireveld*, No. 2:17-cv-00274-WTL-MJD, 2018 WL 500612, at *2 (S.D. Ind. Jan. 22, 2018); *Chinnathambi v. Cwalina*, No. 1:10-CV-02830-RLV-JCF, 2013 WL 12239521, at *5 (N.D. Ga. Aug. 7, 2013).

¹¹ See, e.g., *Annamalai v. Moon Credit Corp.*, 4:16-cv-01277 (S.D. Tex. Sept. 22, 2016).

ENTERED

March 30, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANNAMALAI ANNAMALAI,
BOP #56820-379,

Plaintiff,

v.

PARVATHI SIVANADIYAN,

Defendant.

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CIVIL ACTION NO. H-17-0025

ORDER AND ADDITIONAL SANCTIONS

On February 15, 2017, the court dismissed the civil action filed by federal prisoner Annamalai Annamalai, as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B) and imposed a monetary sanction of \$100.00 against him for his vexatious abuse of judicial resources (Docket Entry No. 14, pp. 4-6). Annamalai has now filed an "Emergency motion to alter and or amend the Judgement" under Rule 59(e) of the Federal Rules of Civil Procedure (Docket Entry No. 19). Annamalai has also filed a separate "Motion Pursuant to Federal rules of civil Procedure 59(e)," purportedly on the defendant's behalf (Docket Entry No. 20). The motions are denied for reasons explained briefly below.

A Rule 59(e) motion "must 'clearly establish either a manifest error of law or fact or must present newly discovered evidence.'"

Ross v. Marshall, 426 F.3d 745, 763 (5th Cir. 2005) (quoting Simon v. United States, 891 F.2d 1154, 1159 (5th Cir. 1990)). Neither of the motions filed by Annamalai demonstrate that this case was dismissed in error or that he is entitled to relief under Rule 59(e). If anything, the motions are consistent with Annamalai's extensive and undisputed record of vexatious, abusive litigation, which was summarized in the Memorandum Opinion and Order entered on February 15, 2017 (Docket Entry No. 14, pp. 3-5).¹

The court previously warned Annamalai that "the filing of other vexatious and/or frivolous motions or pleadings in this case will result in the imposition of additional sanctions, including monetary penalties." (Docket Entry No. 14, p. 6). He has failed to heed that warning.

Accordingly, the court **ORDERS** as follows:

1. The "Emergency motion to alter and or amend the Judgement" (Docket Entry No. 19) and "Motion Pursuant to Federal rules of civil Procedure 59(e)" are **DENIED**.
2. Annamalai is **SANCTIONED** in the amount of **\$500.00** for his abusive litigation practices. Prison officials having custody of plaintiff Annamalai Annamalai (BOP #56820-379) shall place a hold on his inmate trust account and shall deduct this amount when funds are


¹The motion that Annamalai purports to file on the defendant's behalf is particularly suspect given that it was received in an envelope from the federal prison in Terre Haute, Indiana, where Annamalai is presently incarcerated (Docket Entry No. 20, p. 7). Because the defendant's address of record is in Ramnagar, India, the legitimacy of the defendant's signature on this motion and its supporting declaration - both of which appear to have been typed by Annamalai - is dubious, at best, and appears to have been fabricated (Docket Entry No. 20, pp. 4, 6).

available and forward them to the Clerk of Court until the sanction and filing fee are paid in full.

3. Annamalai is **WARNED** that if he files any further vexatious and/or frivolous motions or pleadings in this case, the court will not hesitate to impose additional sanctions, including monetary penalties.

**The Clerk will provide copies of this Order and to the Warden,
FCI Terre Haute, P.O. Box 33, Terre Haute, IN 47802.**

SIGNED at Houston, Texas, on this 30th day of MARCH, 2017.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE

ENTERED

February 15, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANNAMALAI ANNAMALAI,
BOP #56820-379,

Plaintiff,

v.

PARVATHI SIVANADIYAN,

Defendant.

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CIVIL ACTION NO. H-17-0025

MEMORANDUM OPINION AND ORDER

Plaintiff Annamalai Annamalai (BOP #56820-379), also known as Swamiji Sri Selvam Siddhar, is an inmate incarcerated in the United States Bureau of Prisons. Annamalai has filed a "Civil Complaint [and] Demand for Arbitration Pursuant to 9 U.S.C.S. § 4" ("Complaint") (Docket Entry No. 1), alleging that the defendant has defaulted on an unspecified contract. On January 3, 2017, Annamalai was granted leave to proceed in forma pauperis in this case. See Annamalai v. Sivanadiyan, No. H-16-mc-3042 (S.D. Tex.) (Docket Entry No. 2). The case was then assigned to the undersigned judge. After considering all of the pleadings and Annamalai's litigation history, leave to proceed in forma pauperis will be revoked, and this case will be dismissed for reasons explained below.

I. Discussion

Annamalai, the former leader of a defunct Hindu Temple in Georgia, was sentenced to more than 27 years' imprisonment by the United States District Court for the Northern District of Georgia, following his conviction on multiple counts of bank fraud, tax fraud, bankruptcy fraud, and obstruction of justice. See United States v. Annamalai, No. 1:13-cr-437 (N.D. Ga. July 16, 2015). Annamalai now brings this civil action for breach of contract, alleging that the defendant, who is reportedly Annamalai's wife, has defaulted on invoices totaling in excess of one billion dollars. See Complaint, Docket Entry No. 1, p. 3. Annamalai seeks arbitration of the dispute and damages of \$10,000.00 per week for the remainder of Annamalai's lifetime. See id.

Because Annamalai has requested leave to proceed in forma pauperis, the court is required to scrutinize the claims and dismiss the Complaint, in whole or in part, if it determines that the Complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted" or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). There are consequences for prisoners whose lawsuits are dismissed under this provision. Under the "three-strikes" rule found in 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action in forma pauperis in federal court

if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted unless he is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 385 (5th Cir. 1996).

A national case index reflects that Annamalai has filed more than 60 lawsuits in the federal courts. Of these, at least five civil actions filed by Annamalai while incarcerated have been dismissed as frivolous: (1) Annamalai v. Rajkumar, No. 16-cv-4491 (S.D.N.Y. June 15, 2016); (2) Annamalai v. Reynolds, No. 1:16-cv-1373 (N.D. Ga. July 8, 2016); (3) Annamalai v. Paramasivam, et al., No. 1:16-cv-6079 (N.D. Ill. July 13, 2016); (4) Annamalai v. United States, No. 16-815 (Fed. Cl. July 22, 2016); and (5) Annamalai v. United States, No. 16-816 (Fed. Cl. July 19, 2016). Thus, Annamalai has more than three "strikes" against him for filing meritless actions prior to filing the Complaint in this case.

Annamalai does not allege facts showing that he is currently under imminent danger of serious physical injury for purposes of § 1915(g). Because he does not fit within the exception to the three-strikes rule, Annamalai is not eligible to proceed without prepayment of the filing fee. Accordingly, the order granting him leave to proceed in forma pauperis will be vacated and his pauper status will be revoked.

Moreover, a review of Annamalai's substantial litigation history reflects that he has filed a nearly identical complaint

against the same defendant in the United States District Court for the Southern District of Indiana. See Annamalai v Sivanadiyan, No. 1:16-cv-3415 (S.D. Ind.). A complaint is considered "malicious" if it duplicates allegations made in another federal lawsuit by the same plaintiff. See Pittman v. Moore, 980 F.2d 994, 994 (5th Cir. 1993) (per curiam). Because Annamalai has made the same or similar claims in another lawsuit filed by him previously, the court concludes that the present Complaint is subject to dismissal as malicious under 28 U.S.C. § 1915(e)(2)(B)(i). See, e.g., Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989) (duplicative claims may be dismissed sua sponte). This will count as another strike against Annamalai for purposes of § 1915(g).

As illustrated by the Complaint and other pleadings submitted in this case, Annamalai has a well-documented history of "blatantly abus[ing] the judicial process" by filing civil actions to harass the victims of his criminal enterprise and others associated with his criminal case. Hindu Temple and Community Center of the High Desert, Inc. v. Raghunathan, 714 S.E.2d 628, 629-30 (Ga. App. 2011) (describing Annamalai's abusive conduct); see also, e.g., Siddhar v. Reynolds, No. 1:16-cv-1373, 2016 WL 3746184 (N.D. Ga. June 3, 2016) (detailing Annamalai's suit against an IRS agent involved in his prosecution). In addition to his federal lawsuits, Annamalai has filed more than 40 lawsuits in the state courts of Georgia, Ohio, and Texas, where he has been declared a vexatious litigant by

the 151st Civil Court for Harris County. See Siddhar v. Varadharajan, No. H-13-cv-1933, 2014 WL 28165498, at * 2 (S.D. Tex. June 20, 2014) (describing Annamalai's record of abusive litigation in state and federal court). Because of Annamalai's history of filing frivolous claims connected to his criminal case, he also has been declared a vexatious litigant by the United States District Court for the Northern District of Georgia, which has imposed restrictions on his ability to file lawsuits connected to his criminal case. See Hindu Temple and Community Center of High Desert, Inc. v. Kepner, No. 1:12-cv-2941 (N.D. Ga. March 28, 2013) (ECF No. 111); see also United States v. Annamalai, No. 1:13-cr-437 (N.D. Ga. July 16, 2015) (ECF No. 355, p. 2). In light of Annamalai's record of vexatious litigation and abuse of judicial resources, the court concludes that a sanction in the amount of \$100.00 is appropriate.

II. Conclusion and Order

Accordingly, the court **ORDERS** as follows:


1. The Order to Proceed Without Prepaying Fees or Costs as to plaintiff Annamalai Annamalai in No. H-16-mc-3042 (S.D. Tex.) (Docket Entry No. 2) is **VACATED**, and Annamalai's pauper status is **REVOKED**.
2. This action will be dismissed with prejudice. The dismissal will count as a strike for purposes of 28 U.S.C. § 1915(g).
3. Annamalai shall pay the entire \$400.00 filing fee for this case. In addition, Annamalai is **SANCTIONED** in the amount of \$100.00 for his abusive

litigation practices. Prison officials having custody of plaintiff Annamalai Annamalai (BOP #56820-379) shall place a hold on his inmate trust account and shall deduct this amount when funds are available and forward them to the Clerk of Court until the sanction and filing fee are paid in full.

4. Annamalai is **WARNED** that the filing of other vexatious and/or frivolous motions or pleadings in this case will result in the imposition of additional sanctions, including monetary penalties.
5. Annamalai's Motion to Request to Quash the Hearing (Docket Entry No. 9) and Expedited Application for an Appointment [of] Arbitrator(s) (Docket Entry No. 10) are **DENIED as moot**.

The Clerk will provide copies of this Memorandum Opinion and Order to the plaintiff; to the Warden, FCI Terre Haute, P.O. Box 33, Terre Haute, IN 47802; and to the Manager of the Three-Strikes List for the Southern District of Texas.

SIGNED at Houston, Texas, on this 15th day of February, 2017.

A handwritten signature in black ink, appearing to read 'S. Lake', written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**