

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2019

Lyle W. Cayce
Clerk

No. 18-31068
Summary Calendar

SHANTA G. PHILLIPS-BERRY,

Plaintiff - Appellant

v.

LOUISIANA STATE; PATRICIA BLACKWELL SCURLOCK,

Defendants – Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-6037

Before JONES, HIGGINSON, and WILLETT, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:*

In June 2018, Shanta G. Phillips-Berry sued the State of Louisiana and Patricia Blackwell Scurlock under 42 U.S.C. § 1983. Phillips-Berry, who proceeded in district court and remains *in forma pauperis* and *pro se*, alleges that she is the victim of a wide-ranging conspiracy involving “sexual assaults, burglaries, and other violations.” She accuses the defendants of using various public and private entities—including the Louisiana Social Security

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Administration, the Military, the Jefferson Parish School System, AT&T, Medicare, Ochsner Hospital, Wal-Mart, Facebook Inc., and Uber Technologies, Inc.—to perpetuate “civil rights violat[i]ons” and “criminal acts.”

Phillips-Berry traces the origin of the conspiracy to “an accident” that occurred on September 24, 2010, in Kenner, Louisiana while Phillips-Berry was working as an Operation Manager for Space Walk Inc. According to the complaint, Phillips-Berry was leaving a “repair location” (where she had been sent by Defendant Scurlock, the owner of Space Walk Inc.) when “Kenner Police were called” and a “fraudulent report” was made. Thereafter, according to the complaint, “[t]his case turned into a conspiracy causing people to commit felonies, burglaries, sexual assault, thieves [sic], and other hateful crimes.” Phillips-Berry explains that when she visited a doctor, “a device was implanted in [her] body that causes pain.” She specifies:

This device is used and controlled by the use of an application installed on handheld devices. The pain is used by [the] participant installing the software witch [sic] allow[s] pain to flow throughout my body.

Phillips-Berry also asserts that her “home has been broken into on several occasions, Kenner police reports have been altered, food and water in [her] residence has been tamper[ed] with, and [she has] been placed in the mental hospital with NO findings.”

On July 23, 2018, the State of Louisiana moved to dismiss the complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The State invoked the Eleventh Amendment’s doctrine of sovereign immunity, arguing that Congress has not abrogated the states’ Eleventh Amendment immunity as to § 1983 claims and the State of Louisiana has not waived such immunity. Two weeks later, the district court granted the motion.

While the State's motion was pending, Phillips-Berry filed a Motion to Reinstate Social Security Payments, a Motion to Release Information that Controls Device, and a Motion to Reinstate Food Stamps.

On September 7, 2018, the district court issued an order requiring Phillips-Berry to seek leave of court before filing anything additional into the record. The order invited Phillips-Berry to show cause as to why her filing privileges should not be restricted. In response, Phillips-Berry urged that she "has been seeking justice while being attacked by Defendants daily." Among other new allegations, she alleged "the installment of a tracking and camera[] devices on vehicle," "fraudulent insurance claims," and that the "funding to pay participants . . . came from [the BP] Gulf Coast Oil Spill in 2009.

On September 18, 2018, the district court dismissed the complaint, as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).¹ Under that statutory provision, a court "shall dismiss [a] case at any time if the court determines that . . . the action . . . is frivolous or malicious." Phillips-Berry timely appealed the dismissal of her case.

Phillips-Berry's appellate brief names the "painful mind reading platform device," "treason," "corruption," and "government Insurance fraud," among other things, as features of the "conspiracy" that continue to torture her. She requests that this court "take actions and responsibility to reverse these criminal activities throughout this country's justice system."

"We review a determination that a case is frivolous under § 1915(e)(2)(B)(i) for abuse of discretion." *Newsome v. E.E.O.C.*, 301 F.3d 227, 231 (5th Cir. 2002). A complaint may be dismissed as frivolous under this subsection if it "has no arguable basis in law or in fact." *Ruiz v. United States*, 160 F.3d 273, 274–75 (5th Cir. 1998). The Supreme Court has cautioned that

¹ The district court's order denied Phillips-Berry's three aforementioned motions as moot.

dismissal is inappropriate if a court simply finds the plaintiff's factual allegations "unlikely" to be true. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Rather, the claims must "rise to the level of the irrational or the wholly incredible." *Id.*

We find no abuse of discretion in the district court's determination that Phillips-Berry's complaint satisfied the above criteria. With sympathy for suffering that Phillips-Berry appears to be experiencing, we cannot comprehend any cognizable request for legal relief.

AFFIRMED.

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHANTA G. PHILLIPS-BERRY

CIVIL ACTION

V.

NO. 18-6037

LOUISIANA STATE AND
PATRICIA BLACKWELL SCURLOCK

SECTION "F"

ORDER

Shanta Phillips-Berry has filed four complaints in this Court over the last three months. The complaints, which are incomprehensible, allege claims against a range of parties, including several Louisiana agencies, President Trump, Facebook, Uber, and Entergy. The complaints allege that government offices have been used to perform criminal acts and that a device has been implanted into her body that causes her pain and controls her behavior.

In its Order, dated September 7, 2018, this Court ordered that Ms. Phillips-Berry must seek leave from this Court to file anything into the record after finding that her complaints and subsequent motions have been incoherent and wholly lacking any legal basis. The Court invited Ms. Phillips-Berry to show cause as to why the Court should not restrict her ability to file continually frivolous papers.

Ms. Phillips-Berry has responded to this Order, attempting to show cause as to why the Court should not restrict her ability to file. Like in her other submissions, Ms. Phillips-Berry alleges that the defendants have implanted a device into her body that is used to inflict pain upon her. In an attempt to substantiate her allegations, she contends that this Court is unaware of medical technology. Furthermore, she submits medical records documenting hospital visits in an attempt to corroborate her allegations that the defendants have inflicted pain upon her. This response, like all of her submissions, remains incoherent. Her filings consistently request the Court to provide relief that is simply outside the bounds of this Court's jurisdiction. Ms. Phillips-Berry's frequently filed complaints and motions are nonsensical and duplicative, and they are burdening the Court by unnecessarily draining judicial resources; she has flagrantly abused the judicial process.

When a complaint is insubstantial and frivolous, federal jurisdiction cannot be invoked. Dilworth v. Dallas Cty. Comm. Coll. Dist., 81 F.3d 616, 617 (5th Cir. 1996). Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), courts are to dismiss any matter determined to be frivolous.¹ A complaint is frivolous if the

¹ 28 U.S.C. § 1915(e)(2)(B)(i) states, "the court shall dismiss the case at any time if the court determines that: (A) the allegation of poverty is untrue; or (B) the action or appeal: (i) is frivolous or malicious; (ii) fails to state a claim on which

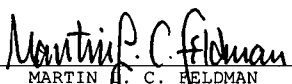
claims alleged have no arguable basis in law or fact. Booker v. Koonce, 2 F.3d 114, 115(5th Cir. 1993). Factual frivolousness includes those allegations that are fanciful, fantastic, or delusional. See Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Ancar v. SARA Plasma, 964 F.2d 465, 468 (5th Cir. 1992). The "substantiality doctrine" is reserved for dismissing complaints that contains "truly fanciful allegations," such as those that suggest bizarre conspiracy theories, supernatural interventions, and fantastic manipulations of their will or mind. McCastle v. United States, No. 15-CV-0420, 2016 WL 749610 at *2 (E.D. Tex. Nov. 14, 2016).

The plaintiff's complaints are fantastic, delusional, and contain truly fanciful allegations. They lack any legal or factual basis. The frivolity of her claims calls for implication of the substantiality doctrine, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), and therefore, the Court does not have jurisdiction over her claims. Accordingly, IT IS SO ORDERED: that Shanta Phillips-Berry's complaint is hereby DISMISSED with prejudice. IT IS FURTHER ORDERED: that Ms. Phillips-Berry's motion to reinstate social security payments, motion to release information that controls device, and motion to reinstate food stamps, as well as

relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief."

Ms. Scurlock's motion to dismiss for failure to state a claim, are hereby DENIED as moot. IT IS FURTHER ORDERED: that Ms. Phillips-Berry is hereby prohibited from filing anything else in this Court regarding her so-called claims.² IT IS FURTHER ORDERED: that Ms. Phillips-Berry is prohibited from filing any additional complaints or bringing any other legal action in this Court that relate to a conspiracy by the defendants to engage in criminal acts and inflict pain upon her, or the insertion of a device controlled by the defendants. Failure to comply with this Order could result in sanctions, including contempt of Court. The Clerk of Court is ordered to provide this Court's Pro Se Office with a copy of this Order and shall not permit any further filings by Ms. Phillips-Berry.

New Orleans, Louisiana, September 18, 2018


MARTIN P. C. FELDMAN
UNITED STATES DISTRICT JUDGE

² Federal courts may refuse to entertain certain complaints or otherwise impose restrictions if the petitioner "flagrant[ly] misuse[s]" or abuses the judicial process. Howard v. King, 707 F.2d 215, 221 (5th Cir. 1983); Cotner v. Hopkins, 795 F.2d 900, 902 (10th Cir. 1986). The Court may impose onerous conditions, "as long as they are designed to assist the district court in curbing the particular abusive behavior involved," and they do not "deny a litigant meaningful access to the courts." Cotner v. Hopkins, 795 F.2d at 902; see In re Green, 669 F.2d 779, 786 (D.C. Cir. 1981).