

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 01 2002

THOMAS K. KAHN
CLERK

No. 02-11476-A

Dist.Ct. Docket No.99-14027-CV-DLG

IN RE:

MARCELLUS M. MASON, JR.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

ORDER:

Marcellus M. Mason, Jr., seeks to file this mandamus petition in forma pauperis ("IFP"), pursuant to 28 U.S.C. § 1915(a), which provides that any court of the United States may authorize the commencement of a proceeding without prepayment of fees by a person who submits an affidavit that includes a statement of assets the person possesses and that the person is unable to pay such fees. The court, however, may dismiss the case at any time if it determines that the allegation of poverty is untrue, or the action or appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(A) & (B).

In his mandamus petition, Mason asks that this Court (1) issue an order permanently enjoining Judge Graham or Magistrate Judge Frank Lynch, Jr. from ever presiding over any matter to which

Mason is a party, (2) vacate the district court's order enjoining Mason from filing any additional pleadings in pending lawsuits and in any new lawsuit which relates in any way to Mason's former employment without first receiving permission from the district court, (3) prohibit Judge Graham from taking any action in case No. 01-14310, (4) transfer all actions in which Mason has been a party to another judge within the Southern District of Florida, and (5) issue an order taxing court costs to the respondents. Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. Id. The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. In re Lopez-Lukis, 113 F.3d 1187, 1188 (11th Cir. 1997).

Mason's requests that this Court issue an order permanently enjoining Judge Graham or Magistrate Judge Frank Lynch, Jr. from ever presiding over any matter to which Mason is a party, prohibit Judge Graham from taking any action in case No. 01-14310, and transfer all actions in which Mason has been a party to another judge within the Southern District of Florida are essentially requests that this Court order a recusal of Judge Graham. Mason has not demonstrated bias stemming from an extra-judicial source, nor has he made a showing of pervasive bias that would necessitate recusal. The allegedly biased actions cited by Macon relate to the judge's rulings in the case and his discretion in limiting the amount of pleadings Mason could file. Mason's dissatisfaction with the ruling does not stem from an extrajudicial source or otherwise require recusal. See Liteky, 510 U.S. at 555-56, 114 S.Ct. at 1157 ("expressions of impatience, dissatisfaction, annoyance, and even anger, [do not establish bias, and] are within the bounds of what imperfect men and women,

even after having been confirmed as federal judges, sometimes display”).

Mason also requests that this Court vacate the district court’s order enjoining Mason from filing any additional pleadings in pending lawsuits and in any new lawsuit which relates in any way to Mason’s former employment without first receiving permission from the district court. Although Mason has not filed a notice of appeal from the district court’s order requiring him to receive the permission of the district court from filing any additional pleadings or from filing any new lawsuits related to his former employment or subsequent interactions with the defendants, Mason may raise this issue on appeal. See generally, Procup v. Strickland, 760 F.2d 1107 (11th Cir. 1985) (reviewing the district court’s order enjoining a defendant from filing additional pleadings unless they were first submitted by an attorney admitted to practice in that court). Mason has an adequate alternative remedy on appeal regarding this issue.

Finally, as Mason has not prevailed on any other the above requests, his request for court costs is denied.

Accordingly, Mason’s IFP motion is **DENIED** because his mandamus petition is frivolous.


UNITED STATES CIRCUIT JUDGE