

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-4378

Kerwin James Miller; Mona Lea
Miller,

Appellants,

v.

Timothy Sherrill, in private capacity,

Appellee.

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* Appeal from the United States
* District Court for the
* District of South Dakota.
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* [PUBLISHED]
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Submitted: June 4, 1998
Filed: July 2, 1998

Before McMILLIAN, LOKEN, and MURPHY, Circuit Judges.

PER CURIAM.

Kerwin James Miller and Mona Lea Miller sued Internal Revenue Service employee Timothy Sherrill, alleging Sherrill violated their constitutional rights in connection with his tax-collection efforts by filing a “frivolous” tax lien. The district court¹ granted Sherrill’s motion to dismiss the complaint for failure to state a claim, and the Millers appeal. In their pro se appellate brief, the Millers argue at length that the existence of uncertainty surrounding federal income tax laws and the nature of income,

¹The Honorable John B. Jones, United States District Judge for the District of South Dakota.

specifically concerning whether the federal income tax is an unconstitutional direct tax which must be apportioned, creates a due process problem in the enforcement of the tax code. They also question whether the tax code applies to them.

After reviewing the record, we conclude that there is no basis for the Millers' action against Sherrill. We note that 26 U.S.C. § 7433 provides the Millers' exclusive remedy for the reckless or intentional disregard of the Internal Revenue Code with respect to collection activities, and the Millers did not state a claim. We therefore affirm the judgment of the district court. We also grant Sherrill's motion for sanctions in the amount of \$500 because arguments similar to those asserted by the Millers on appeal have been rejected repeatedly by the courts, see United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993) (per curiam), cert. denied, 510 U.S. 1193 (1994). See Fed. R. App. P. 38.

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Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.