

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-10413  
Summary Calendar

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GEORGE PHILLIPS, SR.,

Plaintiff-Appellant,

versus

LOCKE, LIDDELL & SAPP LLP,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:99-CV-2897-R

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November 2, 2000

Before POLITZ, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Victoria Phillips' motion to be substituted for George Phillips, who is recently deceased, for his appeal is GRANTED.

This appeal follows the district court's dismissal of George Phillips' complaint due to Phillips' failure to follow the order of the magistrate judge. The magistrate

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judge had ordered Phillips to file his suit on a 42 U.S.C. § 1983 complaint form. The complaint form, however, was for prisoners filing a § 1983 suit. Phillips was not a prisoner; nor was he seeking to file a civil rights action.

The district court's sua sponte dismissal of the complaint based upon Phillips' failure to follow the erroneous order of the magistrate judge was an abuse of discretion. See Fed. R. Civ. P. 41(b); McNeal v. Papasan, 842 F.2d 787, 789-90 (5th Cir. 1988). The district court's alternative conclusion that Phillips' suit was duplicative of a suit previously dismissed by another court was also erroneous.

VACATED and REMANDED.