

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30545
Conference Calendar

WALTER EVANS, JR.,

Plaintiff-Appellant,

versus

STATE OF LOUISIANA, Etc; ET AL,

Defendants,

BARRON BUILDERS & MANAGEMENT CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 00-CV-92

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Walter Evans, Jr., appeals from the district court's Rule 12(b)(5) dismissal of his suit without prejudice against Barron Builders and Management Company for ineffective service of process. We review a district court's dismissal under Rule 12(b)(5) for abuse of discretion. See Lindsey v. United States Railroad Retirement Board, 101 F.3d 444, 445 (5th Cir. 1996). The record fails to show that Evans effected service of process

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

upon "an officer, a managing or general agent" or "any other agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(h)(1). The record also fails to show that Evans complied with the state rules for service of process upon a domestic corporation. See Fed. R. Civ. P. 4(e)(1); La. Code Civ. Proc. Ann. art. 1261. Service upon an attorney representing Barron in separate state court litigation is not effective service. See Fluor Eng'r and Constructors, Inc. v. Southern Pacific Transp. Co., 753 F.2d 444, 449 n.7 (5th Cir. 1985).

Accordingly, the district court's judgment is AFFIRMED.