

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 97-40093  
Summary Calendar

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WILLIAM HAMILTON GARTRELL,

Plaintiff-Appellant,

VERSUS

JAMES R. ZELLER, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Southern District of Texas  
USDC No. C-96-CV-464

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November 11, 1997

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

William Gartrell appeals from the district court's dismissal, without prejudice, of his 42 U.S.C. § 1983 complaint for failure to comply with a court order. See FED. R. CIV. P. 41(b). Because of the running of the statute of limitations, the district court's

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissal without prejudice could have the effect of a dismissal with prejudice. See **Burden v. Yates**, 644 F.2d 503 (5th Cir. 1981), and **Long v. Simmons**, 77 F.3d 878, 880 (5th Cir. 1996). "A dismissal with prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumaciousness and the record reflects that the district court employed lesser sanctions before dismissing the action." **Id.**

The record does not indicate that Gartrell failed to comply fully with the court's order to secure a delay or out of contumaciousness or that the district court employed lesser sanctions before dismissing the action. Therefore, the district court abused its discretion in dismissing the action. See **id.** The district court's judgment is VACATED and the case is REMANDED for further proceedings.