

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10693
Conference Calendar

AMADOR RODRIGUEZ,

Plaintiff-Appellant,

versus

TDCJ-ID; WAYNE SCOTT, Director; LESLIE W. WOODS, Warden;
TERRY EASON, Health Administ.; ANGELA C. SNEED, Guard;
ALEXANDER P. KALMONOV, Doctor; JOHN WILSON, Physician
Assist.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:97-CV-62-X
- - - - -

October 19, 1999

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The summary judgment from which this appeal is taken was issued by the magistrate judge in accordance with the district court's order of reference under 28 U.S.C. § 636(c).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The record does not reflect, however, that Amador Rodriguez consented to entry of judgment by the magistrate judge.

When the magistrate judge enters judgment pursuant to § 636(c), the absence of consent results in a "lack of jurisdiction (or at least fundamental error that may be complained of for the first time on appeal)." Mendes Junior Int'l Co. v. M/V SOKAI MARU, 978 F.2d 920, 923 (5th Cir. 1992); see United States v. Muhammad, 165 F.3d 327, 330-31 (5th Cir.), cert. denied, 119 S. Ct. 1795 (1999). Consent must be on the record and cannot be implied. Muhammad, 165 F.3d at 331. Lack of consent cannot be waived. EEOC v. West Louisiana Health Serv., Inc., 959 F.2d 1277, 1281-82 (5th Cir. 1992). Further, the plaintiff's notice of appeal from the magistrate judge's summary judgment is addressed to "the Honorable Judge" of the district court, not to this court.

The appeal is DISMISSED for lack of appellate jurisdiction. Because the court lacks jurisdiction, all pending motions are DENIED.

APPEAL DISMISSED; MOTIONS DENIED.