

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-40171
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 22, 2018

Lyle W. Cayce
Clerk

RICKY BARNARD JUSTICE,

Plaintiff-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; WARDEN HARRIS; CORRECTIONS OFFICER MCKINNEY; CORRECTIONS OFFICER LEBEAU; CORRECTIONS OFFICER CROFT; CAPTAIN BOLTON; SERGEANT WATSON; SERGEANT DAMIAN; CORRECTIONS OFFICER FLACK; REGISTERED NURSE HENRY; UNIVERSITY OF TEXAS MEDICAL BRANCH GALVESTON; CORRECTIONS OFFICER GIDEON; CORRECTIONS OFFICER ADAMS; WARDEN HUNTER; MAJOR DICKENS,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:16-CV-167

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-40171

Ricky Barnard Justice, Texas prisoner # 1811175, appeals the district court's dismissal without prejudice of his 42 U.S.C. § 1983 action.

This court must examine the basis of its jurisdiction sua sponte if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). We liberally construe Justice's pro se objections, which were filed within 28 days after the entry of the district court's judgment, as a Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment. *See* FED. R. CIV. P. 59(e); *Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994); *United States v. Gallardo*, 915 F.2d 149, 150 n.2 (5th Cir. 1990). Where a litigant files a timely Rule 59(e) motion and a notice of appeal, the notice of appeal does not become effective until the entry of the order disposing of the motion. FED. R. APP. P. 4(a)(4)(A)(iv), (B)(i); *Burt v. Ware*, 14 F.3d 256, 260-61 (5th Cir. 1994).

Because the district court has not yet ruled on Justice's constructive Rule 59(e) motion, this appeal is premature. *See* FED. R. APP. P. 4(a)(4)(B)(i); *Ross v. Marshall*, 426 F.3d 745, 751-52 (5th Cir. 2005); *Burt*, 14 F. 3d at 260-61. The case is, therefore, remanded to the district court for the limited purpose of allowing the district court to rule on Justice's pending postjudgment motion. Justice's appeal is held in abeyance.

REMANDED FOR LIMITED PURPOSE; APPEAL HELD IN ABEYANCE.