

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2024

Lyle W. Cayce
Clerk

No. 23-20538
Summary Calendar

STEVEN E. GREER,

Plaintiff—Appellant,

versus

THE LANCET; DAN ERKES; ELSEVIER; RELX PLC,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-3761

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Steven Greer appeals from the district court’s dismissal with prejudice of his action against *The Lancet*, Dan Erkes, Elsevier, and RELX PLC (“Defendants”). Greer filed his complaint on October 5, 2023. Fourteen days later—before Defendants filed either an answer or a motion for summary judgment, *see* FED. R. CIV. P. 41(a)(1)(A)(i)—Greer filed a

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-20538

notice of voluntary dismissal, “giv[ing] notice that the [] action is voluntarily dismissed without prejudice against the defendants.”

The following day, the district court purported to dismiss the case “*with* prejudice as to all Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).” The court’s order provided no further reasoning. Under Rule 41(a)(1)(B), however, “dismissal is *without* prejudice,” unless “the plaintiff previously dismissed any federal- or state-court action based on or including the same claim.” FED. R. CIV. P. 41(a)(1)(B) (emphasis added); see *Welsh v. Correct Care, L.L.C.*, 915 F.3d 341, 342-44 (5th Cir. 2019).

Accordingly, we VACATE and REMAND to the district court to explain whether Greer has previously dismissed any action based on the same claim or, in the alternative, to DISMISS WITHOUT PREJUDICE Greer’s action.¹

¹ Greer’s motion to supplement the record on appeal is DENIED AS MOOT.