

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 91-6019  
Summary Calendar

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ADAM LEWIS ALLEN,

Plaintiff-Appellee,

VERSUS

CITY OF HOUSTON,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas  
(CA H 90 2338)

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March 9, 1993

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:<sup>1</sup>

Adam Allen appeals the dismissal under Rules 12(b)(6) and 41(b) of his pro se civil rights complaint. We affirm.

I.

On July 24, 1990, Allen filed a complaint against the City of Houston for violating his civil rights. Allen's Original Complaint alleges only that "this form is an accusation of a 'violation of Civil Rights.'" At the same time, Allen also filed a form entitled

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"Employment Discrimination Complaint," which again alleges that the City violated Allen's civil rights. On that form, Allen states:

The defendant is accused of unlawfully omitting recognition to plaintiff's claim for damages obtained through (from) "slight negligents" on the part of the City of Houston.

That form requests that the City "be ordered to recognize the issue upon presentation before a preceding determination of facts and that: the Court grant other relief, including injunctions, damages, costs, and attorney's fees."

On October 11, 1990, the City filed a motion for more definite statement. After a hearing, the district court ordered Allen to amend his complaint by February 1, 1991 to allege the specific basis of his claim. Allen failed to comply with that order.

On February 7, 1991, the City filed a motion to dismiss under Rule 12(b)(6) for failure to state a claim and under Rule 41(b) for failure to prosecute. The court dismissed the action with prejudice on April 16, 1991. Allen then filed a "Motion for Continuation" and, on July 22, a "Motion for Appeal of Judgment." The district court construed the motion for appeal as a notice of appeal.

## II.

We have no difficulty affirming the district court's dismissal based on Rule 12(b)(6). Even in light of the liberal construction afforded pro se pleadings, Allen's complaint clearly fails to state a claim upon which relief can be granted.

We must also consider the district court's dismissal of Allen's claim with prejudice based on Rule 41(b). Rule 41(b) provides that, "[f]or failure of the plaintiff to prosecute or to

comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant."<sup>2</sup> We reverse a Rule 41(b) dismissal only for abuse of discretion. **Salinas v. Sun Oil Co.**, 819 F.2d 105, 106 (5th Cir. 1987). This circuit has held, however, that "Rule 41(b) dismissals with prejudice will be affirmed only upon a showing of 'a clear record of delay or contumacious conduct by the plaintiff, . . . and where lesser sanctions will not serve the best interest of justice.'" **Id.** (quoting **Pond v. Braniff Airways, Inc.**, 453 F.2d 347, 349 (5th Cir. 1972)).

We are satisfied that the district court did not abuse its discretion in dismissing Allen's claim with prejudice. Allen's complaint alleges only that the City violated his civil rights, with no indication whatsoever of the basis for his claim or of the rights that were violated. Moreover, Allen showed little interest in pursuing his lawsuit during the nine months that it was pending in the district court. Allen failed to respond to either the City's motion for more definite statement or the motion to dismiss. Only two months after the court dismissed his suit, when he filed his "Motion for Continuation," did Allen show an interest in his case.

In his "Motion for Appeal," Allen asserts that his failure to obey the district court's order should be excused, because he did not know of the order. Allen's argument is unpersuasive. Although he was incarcerated while his claim was pending, Allen kept in

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<sup>2</sup> We apply the prior version of Rule 41(b), effective until December 1991.

touch with the court; he wrote to the clerk requesting a pretrial conference a month before the court dismissed his claim. Allen's contention that he was unaware of proceedings that took place over a six month period does not warrant a finding that the district court abused its discretion. **See Technical Chemical Co. v. Ig-Lo Products Corp.**, 812 F.2d 222 (5th Cir. 1987) (pro se litigant's assertion that he was unaware of court order did not require reversal of dismissal where litigant's claim was not credible).

We conclude that the district court did not abuse its discretion; accordingly, we AFFIRM the dismissal of Allen's claim under Rules 12(b)(6) and 41(b).