

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4144
Conference Calendar

LAWRENCE JAMES PITTS,

Plaintiff-Appellant,

versus

FNU GREEN, Nurse,
(FNU) BENNETT, Hospital
Administrator, RICHARD PATRIC
MURPHY, Dentist and JOHN DOE,
Doctor, John Sealey Hospital,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:91-CV-130
- - - - -

March 17, 1993

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

This Court has a duty to determine sua sponte whether it has jurisdiction over any case before it. See Morales v. Pan American Life Ins. Co., 914 F.2d 83, 85 (5th Cir. 1990). Rule 4(a)(1), Fed. R. App. P., requires that the notice of appeal in a civil action be filed within 30 days of entry of the judgment or order from which appeal is taken. In this prisoner civil rights

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

action, a final judgment dismissing the complaint was entered on December 24, 1991. Therefore, the final day for filing a timely notice of appeal was January 23, 1992. Plaintiff's pro se notice of appeal, dated as served on December 30, 1991, is stamped as filed on February 7, 1992. A prisoner's pro se notice of appeal is deemed filed when delivered to prison authorities for forwarding to the court clerk. Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988). As it cannot be determined from the record in this case whether plaintiff delivered his notice of appeal to prison officials on or before January 23, 1992, the case is remanded to the district court to make such a determination. See Thompson v. Montgomery, 853 F.2d 287, 288 (5th Cir. 1988). Upon making this determination, the district court shall return the case to this Court for further proceedings, or dismissal, as may be appropriate.

REMANDED