

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4976
Summary Calendar

HUBERT ARVIE,

Plaintiff-Appellant,

VERSUS

DORASEL LASTRAPES, RICHARD G. ANRIDGE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-311-"P")

June 18, 1993

Before JOLLY, BARKSDALE, and E. GARZA, Circuit Judges.

PER CURIAM:*

Hubert Arvie, an inmate at Angola, appeals *pro se* the dismissal of his 42 U.S.C. § 1983 complaint. Lacking jurisdiction, we **DISMISS** the appeal and **REMAND** to the district court.

I.

Arvie filed his action in February 1992. On May 6, 1992, a magistrate judge ordered him to submit, within 30 days, an amended complaint in compliance with Fed. R. Civ. P. 8, because his

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

original complaint was incomprehensible. On June 5, Arvie executed a motion for extension of time to amend his complaint; this motion was filed on June 15. The district judge granted the extension on July 8, allowing Arvie until July 27 to submit the amended complaint.

Before that time had expired, however, the magistrate judge issued a report and recommendation (on July 20), recommending dismissal without prejudice for failure to prosecute because Arvie had not filed an amended complaint. The report and recommendation recited that Arvie had 10 business days in which to object. Arvie, asserting that he did not receive the report and recommendation until July 27, filed his objections on August 10. He objected on the basis that, as discussed above, the extended period had not yet expired for filing the amended complaint, and that his motion for a second extension had not been ruled on. (He apparently signed that second motion on July 24, but it was not filed until August 10.) In his appellate brief, Arvie asserts that he submitted the objections on July 29, which would have made them timely. As required by the local rules, Arvie attached to his objections a proposed order rejecting the report and recommendations.

On August 19, the district judge crossed through the proposed order, wrote "Denied" across it, and added an explanatory note on the bottom that "[t]his matter has been denied in that even if he were correct, the response is untimely". That same day, the district judge signed another document, which appears to be a judgment form which also has handwritten notations on it. The

typewritten portion contains the caption "JUDGMENT", and states that, after independent review of the record *including the plaintiff's written objections*, and for the reasons stated in the magistrate's report and recommendations, the complaint is dismissed without prejudice for failure to prosecute. The district judge crossed through that language, however, and wrote "Denied" across the document, and on the bottom added the notation "[s]ee Order of August 19, 1992".

II.

It goes without saying that federal courts must examine the basis for their jurisdiction, including *sua sponte*. ***United States v. De Los Reyes***, 842 F.2d 755, 757 (5th Cir. 1988). This court has jurisdiction over all final orders of the district court. 28 U.S.C. § 1291. But, the marked up judgment form does not constitute a final order, as required by Fed. R. Civ. P. 58, because it is unclear what the district court intended.

In the context of this case, the notation "Denied" has no meaning as affixed to a document entitled "Judgment". Obviously, we cannot give effect to the typewritten portions of the document, including the portion stating the action was dismissed; they were crossed through. In addition, they also state that Arvie's objections were considered, which is contrary to the contemporaneous order denying them as untimely. Accordingly, because a final judgment is lacking, we likewise lack jurisdiction over the appeal.

III.

For the foregoing reasons, we **DISMISS** this appeal for lack of jurisdiction, and **REMAND** to the district court for such further proceedings as it deems appropriate.

DISMISSED AND REMANDED.