

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1932

Summary Calendar

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ROBERT PAUL HARGUS, JR.,  
Plaintiff-Appellant,

versus

LUBBOCK COUNTY JAIL and  
LUBBOCK MHMR,  
Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(5:93-CV-233-C)

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(January 19, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

The district court dismissed Robert Hargus's suit as frivolous because he did not sue a "person" within the meaning of 42 U.S.C. § 1983. A court should not dismiss under 28 U.S.C. § 1915(d) unless it appears beyond all doubt that the pro se prisoner could prove no set of facts under which he would be entitled to relief. Parker v. Fort Worth Police Dep't, 980 F.2d 1023, 1026 (5th Cir.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1993) (quoting Jackson v. Cain, 864 F.2d 1235, 1241 (5th Cir. 1989)). In this case, as in Parker, no Spears hearing took place, no magistrate's report was made, no questionnaire was sent to Hargus, and the district court did not address the matter of possible amendment. As Hargus indicates that he can name the jail employees who he believes denied him medical treatment, the district court abused its discretion in dismissing under § 1915(d) at this early stage. Parker, 980 F.2d at 1025-26.

REVERSED AND REMANDED