

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5330  
Summary Calendar

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DEE ANN BOYD,  
and WILLIAM BOYD,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(5:93-CV-186)

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(February 18, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

The Boyds' counsel filed suit under the Federal Torts Claim Act in a case involving a motor vehicle incident. While the U.S. Attorney General was properly served, Boyd attempted to serve the U.S. Attorney for the Western District of Louisiana by certified mail rather than by "delivery," as it was until

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

December 1, 1993, specifically required by Fed. R. Civ. P. 4(d)(4). Well within the 120-day period required by Rule 4(j) for effecting service, a magistrate judge admonished Boyd that he would recommend dismissal of the complaint without prejudice against any defendant who was not properly served within 120 days. Boyd did not cure the error in serving the U.S. Attorney, the complaint was dismissed, and appellants have appealed. The dismissal was proper.

This court just reaffirmed that service by mail rather than by delivery is insufficient to comply with Rule 4(d)(4), in the version which applied when this lawsuit was filed. Peters v. United States, 9 F.3d 344 (5th Cir. 1993). Further, the district court did not abuse its discretion in determining that Boyd did not advance sufficient grounds for non-compliance with the rule to avoid the effects of Rule 4(j). See Traina v. United States, 911 F.2d 1155, 1157 (5th Cir. 1990).

The judgment of dismissal is AFFIRMED.