

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-7788  
Summary Calendar

---

GREG DION COLEMAN,

Plaintiff-Appellant,

versus

RICKY SCOTT, ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Northern District of Mississippi  
(4:92CV-237)

---

(May 6, 1994)

Before POLITZ, Chief Judge, DAVIS and SMITH, Circuit Judges.

PER CURIAM:\*

Greg Coleman, *pro se* and *in forma pauperis*, appeals the dismissal without prejudice of his 42 U.S.C. § 1983 complaint for failure to prosecute, Fed.R.Civ.P. 41(b). Finding no abuse of discretion, we affirm.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

### Background

Coleman, an inmate of the Mississippi State Penitentiary at Parchman, filed the instant action challenging various conditions of his confinement. After a **Spears**<sup>1</sup> hearing the magistrate judge ordered process to issue for all defendants and scheduled a bench trial for October 21, 1993. On September 22, 1993 Coleman moved for a continuance which was denied, and the defendants were ordered to respond to Coleman's discovery requests within ten days. On September 30 Coleman filed a motion to rescind the scheduling order, which was denied, but Coleman was given permission to renew the motion if the defendants failed to produce documents timely. Copies of the court's orders of September 29 and October 7 were mailed to Coleman at Parchman via certified mail, but returned by the United States Postal Service on October 8 marked "refused." Coleman purposely declined to accept legal mail. This was directly contrary to instructions given by the clerk of the district court who notified Coleman that he was to keep the court advised of his current mailing address and that the failure to keep the court so advised could result in dismissal of his lawsuit.

The magistrate judge recommended dismissal of Coleman's suit for failure to prosecute because Coleman had prevented the court from communicating with him by refusing to accept the court's mail. The district court accepted the recommendation and dismissed without prejudice. Other motions were denied, and Coleman timely appealed.

---

<sup>1</sup>**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985).

### Analysis

Federal Rule of Civil Procedure 41(b) authorizes a district court to use the sanction of dismissal for a plaintiff's failure to prosecute or comply with any order of the court. The district court may decide *sua sponte* that dismissal is appropriate.<sup>2</sup> We review such dismissals for abuse of discretion.<sup>3</sup> The dismissal herein is without prejudice and it is apparent that the applicable limitations bar will not prevent Coleman from refileing should he so desire.<sup>4</sup> We perceive no abuse of discretion in the district court's ruling.

Coleman contends that his non-receipt of the court's communications was irrelevant because no response was required from him. The character of the orders is fortuitous for when refusing receipt, Coleman could not know the content of the orders. Coleman was provided adequate notice of the imperative that the court be given an address at which he could be reached.<sup>5</sup> He did not do as he was obliged to do. The sanction, albeit not terminative of this matter and which likely will require further judicial resources before final resolution, cannot be deemed an abuse of discretion.

---

<sup>2</sup>**Link v. Wabash R.R. Co.**, 370 U.S. 626 (1962).

<sup>3</sup>**McCullough v. Lynaugh**, 835 F.2d 1126 (5th Cir. 1988).

<sup>4</sup>**James By James v. Sadler**, 909 F.2d 834 (5th Cir. 1990) (finding that under Mississippi law, which provides more than one statute of limitations for personal injury actions, section 1983 actions are governed by the three-year residual period).

<sup>5</sup>See, e.g., **Carey v. King**, 856 F.2d 1439 (9th Cir. 1988) (affirming dismissal of *pro se* plaintiff's suit for failure to keep court apprised of current address at all times).

Coleman also contends that the district court erred by not holding an evidentiary hearing before the dismissal "to determine if any additional constitutional violations had occurred." A district court, however, may dismiss a complaint for failure to prosecute without providing an adversary hearing.<sup>6</sup>

AFFIRMED.

---

<sup>6</sup>**Prive v. McGlathery**, 792 F.2d 472 (5th Cir. 1986).