

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-8407  
Summary Calendar

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OTIS B. PHILLIPS,

Plaintiff,

VERSUS

RONALD J. SHAW, ET AL.,

Defendants-Appellees,

RONALD J. SHAW, ET AL.,

Defendants,

VERSUS

DOLLIE STAFFORD MANNIS,

Movant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(SA-89-CV-1341)

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(May 3, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

BACKGROUND

Otis B. Phillips commenced an action against Ronald J. Shaw

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and other defendants, alleging a conspiracy to deprive him of his civil rights under 42 U.S.C. § 1985 and numerous state tort actions. Appellant Dollie Stafford Manns moved, pursuant to Fed. R. Civ. P. 20, for leave to join the action and filed her joinder petition, alleging claims similar to Phillips's. Having not yet ruled on Manns's motion to join the action, the district court dismissed Phillips's action with prejudice on the ground that Phillips no longer had standing to pursue the case. Shortly thereafter, Manns filed a motion to pursue a separate action and enter default judgments against the defendants, or in the alternative, schedule her cause of action for trial. The district court denied her motion as moot. Manns appeals from that decision.

#### DISCUSSION

##### I. Motion to Dismiss

Defendants move to dismiss the appeal and request sanctions, arguing that Manns is attempting to appeal a nonexistent district court order. This assertion is factually inaccurate. The order from which Manns appeals does exist and is in the record on appeal. Therefore, the motion to dismiss is denied.

##### II. Motion to Pursue Separate Action

Manns argues that the district court erred by denying her motion to pursue a separate action. We disagree. Manns was not properly joined to Phillips's action because the district court never ruled on her motion to permissively join. As the cause of action was dismissed with prejudice, her motion to join is now moot. And because Manns's motion to join is moot, Manns's motion

to separate is also moot. Therefore, the court properly dismissed Manns's motion to pursue a separate action. Manns's claims against the defendants did not, however, become moot. If Manns wishes to pursue her claims, she should file her own, independent action in district court.

#### CONCLUSION

For the foregoing reasons the defendant's motion to dismiss is DENIED, and the district court's decision is AFFIRMED.