IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8516
Conference Calendar

LARRY BROWN,

Plaintiff-Appellant,

versus

WACKENHUT CORPORATION,

Defendant-Appellee.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CV-309

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(October 29, 1993)

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

PER CURIAM:*

On appeal, Larry Brown fails to a address the deliberate indifference issue raised before the district court in his civil rights petition brought under 42 U.S.C. § 1983. Thus, it is deemed abandoned. Hobbs v. Blackburn, 752 F.2d 1079, 1083 (5th Cir.), cert. denied, 474 U.S. 838 (1985).

Initially, we note that the district court construed Brown's objections to the magistrate judge's report as a notice of appeal. This decision runs afoul of Mosley v. Cozby, 813 F.2d

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

659, 660 (5th Cir. 1987), because Brown's objections do not evince a clear intent to appeal. Normally, this would present a jurisdictional problem. However, because the district court made an "affirmative representation" that it was considering Brown's objections to be a notice of appeal, jurisdiction is proper under the "unique circumstances exception." See Prudential-Bache Securities, Inc. v. Fitch, 966 F.2d 981, 985 (5th Cir. 1992) (internal quotation and citation omitted).

Additionally, although the district court stated it was dismissing Brown's petition pursuant to Fed. R. Civ. P. 12(b)(6), Brown filed this suit IFP, and it was dismissed prior to service of process on the defendant. In reality, it was a dismissal under 28 U.S.C. § 1915(d). We recently discussed the difference between dismissals under § 1915(d) and Rule 12(b)(6). See Jackson v. City of Beaumont Police Dept., 958 F.2d 616, 618-19 (5th Cir. 1992). A district court should not dismiss under Rule 12(b)(6) sua sponte before service of process is effected on the defendants. Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985). We reviewed this case under § 1915(d).

Brown argues only that defendant "should be held negligence [sic] to O.H.S.A. Safety Rules, because the Sub-Contractor. . . should have removed [sic] the extension cord." His argument that the court "should award [him] a cash settlement of $250,000" due to the defendant's negligence is unavailing. Negligence does not support a claim under 42 U.S.C. § 1983. Thomas v. Kippermann, 846 F.2d 1009, 1011 (5th Cir. 1988). Brown's appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.