

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20712

LARRY WHITED,

Plaintiff-Appellant,

versus

MILLER, Deputy Sheriff,
Harris County Sheriff's
Department, Et Al.,

Defendants,

M.J. Smith,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-3157
- - - - -

(May 3, 1995)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). In this civil rights case, plaintiff Larry Whited, through counsel, has filed a notice of appeal from an order of the district court dismissing his claims against defendant M. Smith as time-barred.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Whited's claims against the remaining defendant, Robert Pennock, remain to be adjudicated. Although the magistrate judge entered an order of dismissal as to Pennock, the magistrate judge cannot enter an order of dismissal as to a served defendant who did not consent to proceed before the magistrate judge. See EEOC v. West Louisiana Health Servs., Inc., 959 F.2d 1277, 1281-82 (5th Cir. 1992). Thus, because the magistrate judge did not have jurisdiction to dismiss Pennock from the case, Whited's claims against Pennock remain to be adjudicated.

When an action involves multiple parties or multiple claims, any decision that adjudicates the liability of fewer than all the parties or disposes of fewer than all the claims does not terminate the litigation and is therefore not appealable unless certified under Fed. R. Civ. P. 54(b). See Thompson v. Betts, 754 F.2d 1243, 1245 (5th Cir. 1985). The district court has not certified the order for appeal. Accordingly, this court is without jurisdiction.

APPEAL DISMISSED.