UNITED STATES COURT OF APPEALS
for the Fifth Circuit

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No. 94-60304
Summary Calendar
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RHODA McINTOSH,

Plaintiff-Appellant,

VERSUS

THE CITY OF McCOMB, MISSISSIPPI, ET AL,

Defendants-Appellees.

_____

Appeal from the United States District Court
for the Southern District of Mississippi
(3:93-CV-468WS)
_____

(October 4, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[1]

Utilizing Federal Rule of Civil Procedure 41(b), the district court dismissed Appellant's civil rights case for failure to prosecute. Although we agree with the district court that the conduct was contumacious and showed disdain for the court and the judicial process, and is deserving of harsh sanction, the record makes it clear that the conduct was that of Appellant's Louisiana counsel and not of Appellant. We reverse and remand.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The record shows that counsel failed to respond to any number of orders issued by the district court, and, although given numerous opportunities to explain why the case was not being prosecuted, remained mute. The record also makes clear that all the notices were sent to counsel and not to Appellant. When a notice was finally sent directly to Appellant, she immediately filed a pro se response. Our precedent is clear that the sanction of dismissal is only appropriate when the delay is attributable to the party and not to counsel. Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188 (5th Cir. 1992); McNeal v. Papasan, 842 F.2d 787 (5th Cir. 1988). Disrespect for the judicial process, no matter how obstinate, justifies dismissal under Rule 41(b) only when it is attributable to the litigant, not when it is attributable only to counsel.

REVERSED and REMANDED.