

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50772
USDC No. W-95-CV-187

RODNEY LEE WOODS,

Plaintiff-Appellant,

versus

JACK M. GARNER, Warden; CHARLIE F.
STREETMAN, Assistant Warden; WILLIAM L.
NORTHROP; DEBORAH A. PARKER; JOHN STICE;
RAUL J. MATA; EVELYN COOK; T. M. WORTHINGTON;
MICHAEL W. MOORE,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

December 13, 1995
Before KING, SMITH and BENAVIDES, Circuit Judges.

BY THE COURT:

Rodney Lee Woods seeks leave to proceed in forma pauperis (IFP) on appeal. To proceed IFP on appeal, Woods must demonstrate that he is a pauper and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

Woods argues that the district court abused its discretion in dismissing his suit for failure to prosecute. Fed. R. Civ. P. 41(b). This court has established an exacting standard of review when the Rule 41(b) dismissal is with prejudice or when a statute

of limitations would bar reprosecution of a suit dismissed without prejudice under Rule 41(b). Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1191 (5th Cir. 1992). Because the statute of limitations would bar reprosecution of Woods' suit, the district court's dismissal operates as a dismissal with prejudice. The district court abused its discretion in dismissing Woods' complaint with prejudice.

In light of the district court's abuse of discretion, Woods' motion for leave to proceed on appeal IFP is GRANTED. See Jackson, 811 F.2d at 261. Because the suit was dismissed before answers were required, and because further briefing is not required, the district court's judgment is VACATED and the case is REMANDED for further proceedings. See Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982).