

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-41263  
Summary Calendar

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STEVE ALAN BAKER et al.,

Plaintiffs,

STEVE ALAN BAKER,

Plaintiff-Appellant,

versus

STATE OF TEXAS; TEXAS BOARD OF CRIMINAL JUSTICE; TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE-INSTITUTIONAL DIVISION  
COMPANY DEPARTMENTS; UT MEDICAL BRANCH; MANAGED HEALTH CARE  
SYSTEM, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:97-CV-692  
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October 27, 1999

Before GARWOOD, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

The district court ordered that Steve Alan Baker's (#632428) civil rights action be held in abeyance because Baker became mute and could not give testimony during hearings held pursuant to

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). Baker has appealed. The district court's order is an appealable interlocutory order under the collateral-order doctrine. See Johnson v. State of Texas, 878 F.2d 904, 905-06 (5th Cir. 1989).

We review the district court's order, which adopted the findings and conclusions contained in the report and recommendation of the magistrate judge, for an abuse of discretion. See id. at 906. Although the magistrate judge noted that administrative closure is appropriate "if circumstances prevent a lawsuit from proceeding" and "only 'as a last resort after all other alternatives . . . have been rejected,'" see Patton v. Jefferson Correctional Center, 136 F.3d 458, 461 n.3 (5th Cir. 1998), she did not explain why the lawsuit cannot proceed because of Baker's muteness and did not expressly consider and reject other alternatives.

The Spears procedure is itself an alternative to requiring responses to written questions. See Eason v. Holt, 73 F.3d 600, 602 (5th Cir. 1996). Although the magistrate judge stated that she was "unable to determine whether Plaintiff even had stated a cause of action, which is why this Court attempted to conduct a *Spears* hearing," she did not explain how the complaint is inadequate and why those inadequacies could not be fleshed out through written interrogatories. The district court's order is VACATED, and the case is REMANDED for further proceedings.

VACATED AND REMANDED.