

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 25, 2023

Lyle W. Cayce
Clerk

No. 22-40190

RANDALL T. GREENOUGH,

Plaintiff—Appellant,

versus

SHARILLA GRAY,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:21-CV-75

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Our prior panel opinion, *Greenough v. Gray*, No. 22-40190, 2023 WL 2573923 (5th Cir. Mar. 30, 2023), is WITHDRAWN. The following opinion is SUBSTITUTED:

Randall T. Greenough, an inmate confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, appeals the district court's denial of his motion for default judgment.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-40190

It is not clear that the district court's order denying default judgment is appealable at this time because it is not clear that Greenough's case has progressed to final judgment. *See Adult Film Ass'n of America, Inc. v. Thetford*, 776 F.2d 113, 115 (5th Cir. 1985) (holding that orders denying default judgment are not subject to interlocutory appeal). While the district court issued an order adopting the magistrate judge's report and recommendation dismissing Greenough's claims on March 23, 2022, the magistrate judge extended Greenough's time to file objections to the report and recommendation on March 25, 2022, explaining that "the plaintiff did not have an opportunity to file objections" due to mailing delays. Those objections have now been filed, and the district court has not ruled on them.

Because it is not clear, from the record, whether Greenough's case remains pending, we remand to the district court to clarify whether a final judgment has been issued. Upon doing that, the district court shall return the case to this court for further proceedings, or dismissal, as may be appropriate.

LIMITED REMAND.