

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 18-40384  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**  
December 3, 2018

Lyle W. Cayce  
Clerk

BENJAMIN FRANKLIN,

Plaintiff-Appellant

v.

BEEVILLE CITY, TEXAS; GARY PENDARVIS; P. CHAPA; CHRISTIE L. GARCIA; BOBBY HUMPKIN; ASSISTANT WARDEN KENNETH M. PUTNAM, JR.,

Defendants-Appellees

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:17-CV-370

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Before DENNIS, OWEN, and ENGELHARDT, Circuit Judges.

PER CURIAM:\*

Benjamin Franklin, Texas prisoner # 1561085, filed a 42 U.S.C. § 1983 action against the City of Beeville, Texas, and numerous officials at the McConnell Unit of the Texas Department of Criminal Justice (TDCJ) alleging that they acted with deliberate indifference to his health and safety on various grounds. The magistrate judge ordered Franklin to file an amended complaint

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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and denied his motion for reconsideration. He then filed a motion to proceed before the district court, which the magistrate judge denied. Franklin timely appealed.

This court must examine the basis of its own jurisdiction, *sua sponte*, if necessary. *Trent v. Wade*, 776 F.3d 368, 387 (5th Cir. 2015). “In general, it is well established that a magistrate judge’s order is not ‘final’ within the meaning of [28 U.S.C.] § 1291 and may not be appealed to this court directly.” *Donaldson v. Ducote*, 373 F.3d 622, 624 (5th Cir. 2004). Further, there is no evidence that this matter is proceeding before the magistrate judge by consent under 28 U.S.C. § 636(c)(1). Thus, the magistrate judge’s order denying Franklin’s motion is not a final, appealable order, and we do not have jurisdiction to consider his appeal of it. *See id.* at 624-25. Accordingly, Franklin’s appeal is DISMISSED for lack of jurisdiction. All pending motions are DENIED.