

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 23, 2009

No. 08-30340
Summary Calendar

Charles R. Fulbruge III
Clerk

MANUEL D PLAISANCE

Plaintiff-Appellant

v.

BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY; DARRYL
VANNOY, Warden; SHIRLEY COODY, Warden; UNKNOWN BURGESKY,
Captain

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:07-CV-934

Before HIGGINBOTHAM, BARKSDALE, and ELROD, Circuit Judges

PER CURIAM:*

Manuel D. Plaisance, Louisiana prisoner # 196480, appeals the district court's dismissal of his civil rights complaint for failure to comply with an order to amend his complaint to include the names of all the parties on its front page and to submit a statement of account completed by an authorized officer. Although the district court dismissed Plaisance's suit without prejudice, the

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

dismissal is effectively with prejudice due to the one-year statute of limitations. See *Owens v. Okure*, 488 U.S. 235, 249–50 (1989); *Long v. Simmons*, 77 F.3d 878, 880 (5th Cir. 1996); *Davis v. La. State Univ.*, 876 F.2d 412, 413 (5th Cir. 1989).

The record does not demonstrate that Plaisance's failure to comply with the court's order was the result of contumaciousness or an attempt to delay the proceedings. See *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992). Accordingly, the district court's dismissal of Plaisance's suit was an abuse of discretion. The district court's judgment is vacated and the case is remanded for further proceedings. Plaisance's motions for costs and for production of documents are denied.

VACATED AND REMANDED; MOTIONS DENIED.