

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

United States Court of Appeals  
Fifth Circuit

**FILED**

March 4, 2013

Lyle W. Cayce  
Clerk

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No. 12-10807

Summary Calendar

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JOHN MARK QUAAK,

Plaintiff-Appellant

v.

THE STATE OF TEXAS; TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE-INSTITUTIONAL DIVISION NEAL UNIT,

Defendants-Appellees

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:12-CV-137

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Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:\*

John Mark Quaak, Texas prisoner # 1436525, appeals the district court's dismissal of his lawsuit without prejudice for failure to prosecute or comply with a court order, pursuant to FED. R. CIV. P. 41(b). We review the dismissal for an abuse of discretion. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-10807

In the district court, Quaak argued that he was not trying to file an action under 42 U.S.C. §1983, instead he was simply “giving notice” to the State of Texas, perhaps an allusion to the notice required under Texas Civil Practice and Remedies Code §101.101. On appeal, although he argues that the dismissal was erroneous, Quaak simultaneously renews his contention that he has not yet filed a formal lawsuit, only a pleading notifying the defendants of his intent to sue them at some point in the future. He conclusionally asserts that, by its dismissal order, the district court has conspired with the defendants to violate his constitutional rights.

By asserting that he does not yet intend to file a civil rights lawsuit, Quaak admits his failure to comply with the district court’s show cause order directing him to withdraw the suit if he did not seek to pursue an action at this time. Quaak has thus failed to show an abuse of discretion on the district court’s part. *See* FED. R. CIV. P. 41(b); *McCullough*, 835 F.2d at 1127. Accordingly, the district court’s judgment is AFFIRMED. Quaak’s motion for the appointment of counsel is DENIED.