

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 13-1600

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James Mark Vogel

*Plaintiff - Appellant*

v.

Scot Turner, Aitkin County Sheriff; Debra Hamilton, Jail Administrator; Jeremy Swensen, Asst. Jail Admin.; Janet Larsen, LPN; Dianne Grinde, D.O.C. Rep.

*Defendants - Appellees*

Alicia Petersen, Jail Nurse

*Defendant*

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Appeal from United States District Court  
for the District of Minnesota - Minneapolis

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Submitted: August 29, 2013

Filed: September 12, 2013

[Unpublished]

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Before SMITH, BOWMAN, and SHEPHERD, Circuit Judges.

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PER CURIAM.

James Mark Vogel appeals following the district court's<sup>1</sup> grant of summary judgment to some defendants in his 42 U.S.C. § 1983 action. We find that jurisdiction is lacking over this premature appeal. See Huggins v. FedEx Ground Package Sys., Inc., 566 F.3d 771, 773 (8th Cir. 2009) (where it appears jurisdiction is lacking, appellate courts are obligated to consider sua sponte jurisdictional issues). Specifically, when Vogel filed his notice of appeal (NOA), his claims against Alicia Peterson were still pending, as the district court had yet to adopt the magistrate's report recommending the dismissal without prejudice of those claims. The court later did so, and then entered final judgment, but this does not save Vogel's premature appeal. See 28 U.S.C. § 1291 (courts of appeals have jurisdiction of appeals from final decisions); Thomas v. Basham, 931 F.2d 521, 523 (8th Cir. 1991) (appeal was premature when some claims remained pending); see also Dieser v. Cont'l Cas. Co., 440 F.3d 920, 924-25 (8th Cir. 2006) (later entry of judgment did not save prematurely filed NOA because, when NOA was filed, district court had not announced decision that would be appealable if immediately followed by entry of judgment). We dismiss the appeal for lack of jurisdiction.

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<sup>1</sup>The Honorable Patrick J. Schiltz, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Jeanne J. Graham, United States Magistrate Judge for the District of Minnesota.