

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 01-10723

(Summary Calendar)

SCOTT ROMAINE RITTER,

Plaintiff - Appellant,

versus

FNU COOK, Assistant Warden; FNU EASON, Assistant Warden;
FNU OLIVER, Major; FNU THOMAS, Major; EMILY DOAN,
Classification Committee; FNU COFFMAN, Classification
Committee; KELLY B STRONG, Administrative Assistant; STEVEN
PECK, Dr; ADEL NAFRAWI, Dr; JACK CALHOUN, Dr; BOB
PREWIT, Health Administrator; WAYNE SCOTT, Director; GARY
JOHNSON, Director Texas Department of Criminal Justice -
Institutional Division; FNU BOUNDS, LVN; FNU WILLS, Ms; FNU
DUKE, Senior Warden,

Defendants - Appellees.

Appeal from the United States District Court
For the Northern District of Texas
USDC No. 1:00-CV-290

July 8, 2002

Before JONES, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Scott Romaine Ritter, a Texas prisoner (#731209), appeals from the magistrate judge's order denying his motion for a temporary restraining order ("TRO") and preliminary injunction, in this 42 U.S.C. § 1983 civil rights action. The magistrate judge denied the motion even though none of the defendants had formally consented to have the magistrate judge dispose of such motions.

An order denying a TRO is not appealable, *see Faulder v. Johnson*, 178 F.3d 741, 742 (5th Cir. 1999), but the denial of a preliminary injunction ordinarily is appealable immediately. *See Lakedreams v. Taylor*, 932 F.2d 1103, 1107 (5th Cir. 1991); 28 U.S.C. § 1292(a)(1).

If necessary, this court must sua sponte examine the magistrate judge's jurisdiction. *See Withrow v. Roell*, 288 F.3d 199, 200 (5th Cir. 2002). Because the magistrate judge had not obtained consent from all parties to rule on Ritter's motion for a preliminary injunction, the magistrate judge was without jurisdiction to issue a dispositive order on that motion. *See Withrow*, 288 F.3d at 204-205 (holding that magistrate judge must secure consent of all parties before acting pursuant to 28 U.S.C. § 636(c)). Although we acknowledge that the magistrate judge did not have the benefit of our decision in *Withrow*, we must VACATE and REMAND this case for further proceedings consistent with this opinion.

VACATED AND REMANDED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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