

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10136
Summary Calendar

RICK AUSTIN,

Plaintiff-Appellant,

versus

CITY OF GLENN HEIGHTS, ET AL,

Defendants,

CITY OF GLENN HEIGHTS,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:96-CV-1720-G

- - - - -
February 12, 1999

Before EMILIO M. GARZA, DeMOSS and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rick Austin appeals the district court's dismissal of his civil rights complaint pursuant to Fed. R. Civ. P. 16(f). for failing to file timely a joint status report. The district court's order does not indicate whether the judgment was with or without prejudice; nevertheless, since the order does not indicate that the dismissal is without prejudice, it is deemed an adjudication on the merits. See Callip v. Harris County Child

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Welfare Dept., 757 F.2d 1513, 1519 (5th Cir. 1985)(Fed. R. Civ. P. 41(b) case). The district court did not consider alternatives to dismissing Austin's claim; therefore, the district court's order is VACATED, and Austin's case is REMANDED to determine whether a lesser sanction would serve the interests of justice. See SEC v. First Houston Capital Resources Fund, 979 F.2d 380, 381-82 (5th Cir. 1992).

VACATED and REMANDED.