

July 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60605
Summary Calendar

ROCKIE D. PICKENS,

Plaintiff-Appellant,

versus

VIMAL POWELL, Inmate Legal Assistance Program Technician,
in his individual capacity,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:03-CV-427

Before Barksdale, Stewart, and Clement, Circuit Judges.

PER CURIAM:*

Rockie D. Pickens, Mississippi inmate # 71454, seeks to proceed in forma pauperis (IFP) on appeal from the district court's dismissal of his civil rights complaint under FED. R. CIV. P. 4(m) for failure to serve the defendant. Pickens argues that he was entitled to rely on the United States Marshal's Service to serve Powell and that it failed to effect service by not serving Powell personally at his home address.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

By moving for leave to proceed IFP, Pickens is challenging the district court's certification that his appeal was not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). Because Pickens was IFP, he was entitled to rely on the Marshal's Service to effect service of his complaint on Powell. See 28 U.S.C. § 1915(c); FED. R. CIV. P. 4(c)(2); Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). If the Marshal's Service attempted to serve Powell by certified mail only and not personally, the Marshal's Service improperly performed its duty, and the district court abused its discretion when it dismissed Pickens's suit. See Lindsey v. United States R.R. Retirement Bd., 101 F.3d 444, 447 (5th Cir. 1996); FED. R. CIV. P. 4(e); MISS. R. CIV. P. 4(c)(5); Triple C Transp., Inc. v. Dickens, 870 So. 2d 1195, 1198-99 (Ms. 2004).

IT IS ORDERED that Pickens's motion to proceed IFP is GRANTED. The district court's certification decision is VACATED, and the case is REMANDED for the district court to identify evidence that the Marshal's Service attempted to serve Powell personally. If the district court is unable to identify such evidence, it should order the United States Marshal's Service or other appropriate person under FED. R. CIV. P. 4(e) to serve Pickens's complaint on Powell personally.

IFP GRANTED; VACATED AND REMANDED.