

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

CORRECTED

March 01, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 23-20538 Greer v. Lancet
USDC No. 4:23-CV-3761

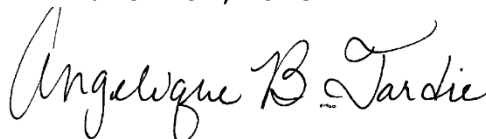
Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Angelique B. Tardie, Deputy Clerk

Enclosure(s)

Mr. Steven E. Greer

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2024

Lyle W. Cayce
Clerk

No. 23-20538
Summary Calendar

STEVEN E. GREER,

Plaintiff—Appellant,

versus

THE LANCET; DAN ERKES; ELSEVIER; RELX PLC,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-3761

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Steven Greer appeals from the district court’s dismissal with prejudice of his action against *The Lancet*, Dan Erkes, Elsevier, and RELX PLC (“Defendants”). Greer filed his complaint on October 5, 2023. Fourteen days later—before Defendants filed either an answer or a motion for summary judgment, *see* FED. R. CIV. P. 41(a)(1)(A)(i)—Greer filed a

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-20538

notice of voluntary dismissal, “giv[ing] notice that the [] action is voluntarily dismissed without prejudice against the defendants.”

The following day, the district court purported to dismiss the case “*with* prejudice as to all Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).” The court’s order provided no further reasoning. Under Rule 41(a)(1)(B), however, “dismissal is *without* prejudice,” unless “the plaintiff previously dismissed any federal- or state-court action based on or including the same claim.” FED. R. CIV. P. 41(a)(1)(B) (emphasis added); see *Welsh v. Correct Care, L.L.C.*, 915 F.3d 341, 342-44 (5th Cir. 2019).

Accordingly, we VACATE and REMAND to the district court to explain whether Greer has previously dismissed any action based on the same claim or, in the alternative, to DISMISS WITHOUT PREJUDICE Greer’s action.¹

¹ Greer’s motion to supplement the record on appeal is DENIED AS MOOT.

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 16, 2024

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

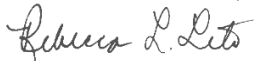
No. 23-20538 Greer v. Lancet
USDC No. 4:23-CV-3761

Dear Mr. Ochsner,

Enclosed is an opinion entered in this case. The case has been placed in abeyance pending disposition of the remand proceedings stated within the opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Enclosure(s)

cc: Mr. Steven E. Greer