

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2019

Lyle W. Cayce
Clerk

No. 19-30277
Summary Calendar

JANE DOE,

Plaintiff - Appellant

v.

CITY OF BATON ROUGE; JAMES WEBER; CHARLES DOTSON;
STEPHEN MURPHY; S. CAREY, ET AL,

Defendants - Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:19-CV-48

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Jane Doe appeals the district court's order dismissing her case with prejudice, arguing that the dismissal should have been without prejudice. We agree and therefore REVERSE.

"[A] plaintiff has an absolute right to dismiss a lawsuit before the defendant has filed an answer or summary judgment motion." *Carter v. United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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States, 547 F.2d 258, 259 (5th Cir. 1977). The defendants here had no opportunity to do either of those things—they had, after all, not been served with the complaint. The plaintiff thus still possessed the legal right to dismiss her case without prejudice. *See* FED. R. CIV. PRO. 41(a)(1). The judgment is REVERSED, and the case is remanded with instructions to enter an order dismissing Jane Doe’s complaint without prejudice.