

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3498

George Poole,

Appellant,

v.

Darlene Wansing; Gary Kempker;
George Lombardi; David Terry;
Michael Bowersox; Arlene O'Brien;
Bobby Weber; Guard Anders; South
Central Correctional Center, Mailroom
Staff,

Appellees.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: May 16, 2005
Filed: May 19, 2005

Before WOLLMAN, FAGG, and COLLOTON, Circuit Judges.

PER CURIAM.

Former Missouri inmate George Poole appeals from the district court's order granting defendant's motion to dismiss his civil rights and tort complaint against various prison officials. We grant Poole leave to proceed in forma pauperis, and dismiss the appeal for want of jurisdiction.

The judgment was not a final, appealable order, because it did not dispose of all of Poole's claims. See 28 U.S.C. § 1291 (creating appellate jurisdiction over final decisions of district courts); Fed. R. Civ. P. 54(b) ("order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties"). Poole's complaint stated that defendant Missouri Department of Corrections Director Gary Kempker improperly refused him release money and other funds, and that some of the other defendants in various ways violated his First, Fourth, Fifth, Eighth, and Fourteenth Amendment rights. Poole expanded on his claims in his objections to the magistrate's report and recommendation, stating that defendants opened and kept his legal mail, searched his cell in the middle of the night, and kept him naked in a cold cell for 23 hours. The court's order from which Poole seeks to appeal addressed only a due process claim relating to the state court's refusal to waive a service-of-process fee.

Therefore, we dismiss the appeal for want of jurisdiction. See Thomas v. Basham, 931 F.2d 521, 522-24 (8th Cir. 1991) (appellate courts have obligation to raise jurisdictional issues sua sponte "when there is an indication that jurisdiction is lacking"; appeal was "clearly premature" where some claims were still pending).
