

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-21128
Conference Calendar

ANDRE JOEL HOWARD,

Plaintiff-Appellant,

versus

THE STATE OF TEXAS;
WORKERS COMPENSATION COMMISSION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-2953

August 21, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:*

Andre Howard appeals the district court's dismissal of his complaint for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Howard filed suit against the State of Texas and its agency, the Texas Workers' Compensation Commission (the "Commission"), alleging violations of the Fourteenth Amendment and defamation of character. We review the district court's dismissal de novo. See Den Norske Stats Oljeselskap As v. Heeremac Vof, 241 F.3d 420, 424 (5th Cir. 2001).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Howard did not brief the jurisdictional issue and has therefore abandoned it. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); see also Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). Nevertheless, "in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984) Howard has not shown that the Commission or the State of Texas has waived immunity from suit. The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore DISMISSED. 5TH CIR. R. 42.2.