

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10472
Summary Calendar

VICTORIA PHILLIPS, substituted in place and instead of
George Phillips, Sr., deceased,

Plaintiff-Appellant,

versus

LOCKE, LIDDELL & SAPP, L.L.P.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CV-2897-R

October 4, 2001

Before DUHÉ, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Victoria Phillips ("Phillips") appeals the district court's summary-judgment dismissal of the 42 U.S.C. § 1983 lawsuit initiated by her husband, who is deceased. Phillips renews her argument that Locke Liddell filed two motions for summary judgment, in violation of Rule 52.6(b). As the district court determined, the record establishes that Locke Liddell filed only one summary-judgment motion, and this claim fails.

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Phillips also renews her argument that the Fifth Circuit's remand following the original dismissal of the complaint constituted a ruling in her favor on the merits, and she urges that the district court erred in reversing the Fifth Circuit's judgment by ruling in Locke Liddell's favor on its summary-judgment motion. This argument is factually frivolous. This court's prior remand did not address the merits of the 42 U.S.C. § 1983 suit. See Phillips v. Locke, Liddell & Sapp, L.L.P., No. 00-10413 (5th Cir. Nov. 29, 2000)(unpublished).

Phillips does not brief any argument that there was a genuine issue of material fact which precluded summary judgment, and she has thus waived the argument. See id.; passim; see also Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (arguments not briefed on appeal are deemed abandoned). Even had she briefed the argument, it is without merit. As the district court determined, Robertson's affidavit defeats the factual basis for Phillips' claims, and Phillips has not provided any competent summary-judgment evidence to controvert that affidavit. See Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc); Newell v. Oxford Management, Inc., 912 F.2d 793, 795 (5th Cir. 1990).

The instant appeal is wholly without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, it is DISMISSED. See 5th Cir. R. 42.2.

APPEAL DISMISSED.