

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2316
Summary Calendar

BARBARA A. FEDOR,

Plaintiff-Appellant,

VERSUS

THOMAS E. ANDREOLI and UNIVERSITY TEXAS MED.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-90-654)

(November 30, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Barbara Fedor challenges the district court's granting defendants' separate motions to dismiss and for summary judgment under Fed. R. Civ. P. 12(b) and 56 respectively. We **AFFIRM**.

I.

Fedor performed a three-year residency in internal medicine at the University of Texas Health Science Center at Houston. Thomas Andreoli was Chairman of the Department of Internal Medicine at the

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Center and, therefore, was responsible for the residency program. Fedor alleged, in general, that Andreoli engaged in occasional conduct that, collectively, might be described as sexual harassment. Because she resisted Andreoli's alleged overtures, Fedor alleged that she was "cashiered out" of the residency program.

The evidence, however, demonstrates that Fedor completed her residency at the Center. Also, she was granted her last two months off, paid, in order to study for the FLEX exam, a basic licensing exam normally taken prior to residency. Fedor had not yet passed the exam; until she passed, she could not practice medicine. The Center's House Staff Committee did refuse to certify her for the American Board of Internal Medicine examination, citing deficiencies in medical knowledge, "inadequate clinical competence", and Fedor's difficulty in working with other residents and medical students. Fedor has since sat for, and failed, the Board examination.

Fedor filed this action in state court against both the Center and Andreoli; the defendants removed the case to federal court. Fedor sought monetary damages, claiming that the Center committed a number of wrongs against her in violation of the Texas and Federal Constitutions; that Andreoli committed a number of common-law torts, including battery, false imprisonment, interference with contract, and negligent infliction of emotional distress; and that

the Center and Andreoli conspired against her.² The district court, pursuant to a very thorough opinion, granted the Center's motion to dismiss and Andreoli's motion for summary judgment.³

II.

We review a district court's order granting summary judgment *de novo*. *E.g.*, **Amburgey v. Corhart Refractories Corp.**, 936 F.2d 805, 809 (5th Cir. 1991). Likewise, orders granting motions to dismiss are reviewed *de novo*. *E.g.*, **Fernandez-Montes v. Allied Pilots Ass'n**, 987 F.2d 278, 284 (5th Cir. 1993).

We agree with, and adopt, the conclusions reached by the district court in its well reasoned and comprehensive opinion. Specifically, the district court properly dismissed the claims against the Center because the Eleventh Amendment commands that we respect Texas' sovereign immunity; Fedor cites no authority that supports the proposition that a Texas institution is amenable to suit for past monetary damages of the sort she seeks.

² These were the claims made in Fedor's third amended complaint. The Center originally removed this case to federal court because § 1983 and Title VII claims were included in Fedor's state complaint. The third amended complaint did not raise either claim. Although Fedor sought leave to file a fourth amended complaint, the district court denied Fedor's motion. Thus, the third amended complaint was the one against which the motions to dismiss and for summary judgment were filed.

³ The district court did so without the benefit of responses by Fedor to those motions. The Center's motion to dismiss was filed on April 6, 1992. Fedor filed an unopposed motion to extend her time to respond to May 31, 1992; however, Fedor did not respond until March 10, 1993 -- *after* the district court entered final judgment. Andreoli's motion to dismiss and for summary judgment was filed on May 29, 1992, *after* Fedor moved to extend the time to respond to the Center's motion to dismiss. Fedor *never* responded to Andreoli's motion before the entry of final judgment, choosing, once again, to wait until March 10, 1993, to respond.

The district court properly granted summary judgment for Andreoli for the following reasons: the false imprisonment and battery claims are time-barred; the interference with contract claim is without merit, as Andreoli is an agent of a party to the contract; the negligent infliction of emotional distress claim is groundless (or, in the alternative, is time-barred)⁴; and the conspiracy claim is both conclusory and misguided: Andreoli and the Center constitute a single legal entity which cannot conspire with itself.

III.

For the foregoing reasons, the judgment is

AFFIRMED.

⁴ Fedor contends that she did not present a *negligent* infliction of emotional distress claim; rather, she asserts that a "scrivener's error" miscast her *intentional* infliction of emotional distress claim as one for negligence. Andreoli's motion for summary judgment, addressing the negligence claim, was before the district court for nine months without response by Fedor before judgment was entered. Needless to say, Fedor should have noticed that the parties were proceeding as if the claim were one grounded in negligence, and rectified this alleged error during that time. This error was not raised until Fedor's motion for new trial. Fedor does not assert that the district court erred in refusing to grant a new trial on that basis, and no authority need be cited for the rule that we do not address issues raised for the first time on appeal.