

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8326
Summary Calendar

ALVIS LEE BROOKS,

Plaintiff-Appellant,

versus

STATE OF TEXAS ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CV-49
- - - - -

(January 7, 1994)

Before DUHE', EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:*

Alvis Lee Brooks filed a civil rights action in the 167th District Court of Travis County, Texas. After the Supreme Court of Texas dismissed Brooks' appeal of a trial court ruling on a venue motion, Brooks removed the case to the federal district court. Because the federal removal statute only permits removal by defendants, the magistrate judge concluded that the case had been improvidently removed and recommended that the case be remanded because the district court lacked jurisdiction. After conducting a de novo review, the district court adopted the

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

reasoning of the magistrate judge and remanded the case to the state district court.

"This Court must examine the basis of its jurisdiction, on its own motion, if necessary." Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). The appealability vel non of a remand order based on the district court's conclusion that it lacked subject matter jurisdiction and that the plaintiff had no right of removal is a complicated matter which we do not reach because the appeal can and should be dismissed as frivolous.

"[O]nly a defendant, never a plaintiff, may remove a civil action from state to federal court" McKenzie v. U.S., 678 F.2d 571, 574 (5th Cir. 1982) (citing 28 U.S.C. § 1441(a) and Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 61 S. Ct. 868, 85 L. Ed 1214 (1941)). The district court properly remanded the action. This appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.