

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-11014
Conference Calendar

GEORGE ARCE,

Plaintiff-Appellant,

versus

MEGAN MITCHELL,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:95-CV-1356-G
- - - - -

March 1, 1996

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

George Arce appeals the dismissal of his civil rights complaint as frivolous. Arce's argument that the dismissal violates his right to due process lacks merit. Arce does not argue that the district court abused its discretion by determining the defendant was not a state actor and dismissing his appeal. Thus, this issue is abandoned on appeal. He was put on notice in the magistrate judge's report that his suit could be

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

dismissed. He filed objections to the report, but did not seek to amend his complaint. His contention that he did not have the opportunity to amend his complaint is frivolous.

Arce also argues that he did not receive a copy of an amended report and recommendation by the magistrate judge and, thus, was not allowed the opportunity to file objections to it in violation of his due process rights. The amended findings and recommendation referred to by the district court in its order of dismissal is not part of the record and mention of it was apparently a mistake. Because an amended report and recommendation does not exist, this argument lacks a factual basis.

AFFIRMED.