

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50329

Summary Calendar

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CHERYL JAN CARLSON

Plaintiff-Appellant,

versus

KRISTI MICANDER, P.C.,  
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY,  
WILLIAM TREACY, and  
PAUL GAVIA

Defendant-Appellee.

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Appeal from the United States District Court  
For the Western District of Texas  
(EP-95-CV-385)

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November 25, 1996

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Plaintiff Cheryl Carlson appeals the district court's dismissal of defendant Kristi Micander, P.C., for lack of subject matter jurisdiction, FED. R. CIV. P. 12(b)(1), and grant of summary judgment for the remaining defendants.

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

The state of Texas and any of its actors acting in their official capacity are immune from suit under § 1983. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). Plaintiff failed to raise any question of material fact, and the remaining Texas defendants (Treacy and Gavia) were entitled to judgment as a matter of law, because plaintiff points to no constitutional or federal law violation, even if *arguendo* she has shown a violation of state law. *Stern v. Tarrant Co. Hosp. Dist.*, 778 F.2d 1052 (5th Cir. 1985) (en banc), *cert. denied*, 476 U.S. 1108 (1986). The district court correctly granted summary judgment. FED. R. CIV. P. 56; *Celotex v. Catrett*, 47 U.S. 317 (1986).

Having dismissed the "Texas defendants" from the suit, the district court lacked any basis for subject matter jurisdiction over defendant Kristi Micander, P.C. The district court lacked diversity jurisdiction because Carlson and Kristi Micander, P.C., are both citizens of the state of New Mexico. 28 U.S.C. § 1332. The district court lacked subject matter jurisdiction over Kristi Micander, P.C., because the federal statute plaintiff cites, 42 U.S.C. § 1983, does not apply to private professional corporations. 28 U.S.C. § 1331. Lacking subject matter jurisdiction over any dispute between plaintiff and Kristi Micander, P.C., the district court correctly dismissed plaintiff's complaint with respect to this defendant.

AFFIRMED.