

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50332
Summary Calendar

SERGIO AGUIRRE,

Plaintiff-Appellee,

versus

NEW BRAUNFELS INDEPENDENT SCHOOL DISTRICT,

Defendant-

Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-02-CV-47

November 13, 2002

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

New Braunfels Independent School District (“NBISD”) appeals the district court’s order requiring it to pay attorney fees to Sergio Aguirre (“Aguirre”) for improperly removing Aguirre’s state court suit against NBISD to federal court. Aguirre had filed a “Petition for Trial De Novo” in the state district court seeking to reverse NBISD’s decision expelling Aguirre from high school for possessing an alcoholic beverage on school property.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court did not abuse its discretion in ordering NBISD to pay Aguirre's attorney fees incurred as a result of the removal, in accordance with 28 U.S.C. § 1447(c). Although the petition adverted to violations of "due process," it is apparent that the petition sought to invoke the provision of the Texas Education Code allowing a state-court de novo trial on the merits of a school board's expulsion decision. See TEX. EDUC. CODE § 37.009(f) ("The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located."). Thus, there was not an objectively reasonable basis to believe that removal was proper. See Valdes v. Wal-Mart Stores, Inc., 199 F.3d 290, 293 (5th Cir. 2000).

AFFIRMED.