

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2388
Conference Calendar

JUMEAU ONNETTE,

Plaintiff-Appellee,

versus

W.P. CLEMENTS ET AL.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-88-3053
- - - - -

March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Jumeau Onnette alleges he received personal injuries as a result of working on a scaffolding at the direction of employees of the Texas Department of Corrections. The State of Texas was named as a defendant. Onnette alleges the State of Texas violated his due process rights by failing to provide safe working conditions.

Neither a state nor its agencies may be sued in federal court unless the state has consented to the suit. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 100, 104

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

S.Ct 900, 79 L.Ed.2d 67 (1984); Edelman v. Jordan, 415 U.S. 651, 673, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). Texas has not consented to this suit, and Onnette has not pleaded consent. The retroactive, compensatory damages Onnette seeks are expressly prohibited by well-established law. Pennhurst, 465 U.S. at 105-106; Edelman, 415 U.S. at 677.

The Eleventh Amendment acts as a jurisdictional bar to suits against a state or its agencies. Edelman, 415 U.S. at 678. Eleventh Amendment immunity deprives the district court of subject matter jurisdiction over the State. Crane v. Texas, 759 F.2d 412, 415 (5th Cir.), cert. denied, 474 U.S. 1020 (1985). The State of Texas asserted its immunity in its motion to dismiss. The district court improperly denied the motion. Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., No. 91-1010, 1991 U.S. LEXIS 830, *13, 61 U.S.L.W. 4045 (U.S. January 12, 1993). Therefore, the decision of the district court is REVERSED and Onnette's action against the State of Texas is REMANDED for entry of judgment of dismissal.