

2004 WL 719243

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United States District Court,
N.D. Texas, Fort Worth Division.

John Craig PURVIS, Pro se, TDCJ-ID # 1002829
Plaintiff,
v.

Joseph DOMINGUES, Warden, Benny Brown,
Asst. Warden, Daniel Whitaker, Captain, Douglas
Lockhart, Chief of Classification, Dennis Markgraf,
John Solis, Israel Reyna, and Larry Goucher,
Defendants.

No. 2:01-CV-0238. | April 1, 2004.

Attorneys and Law Firms

John Craig Purvis, Beaumont, TX, pro se.

Celamaine Cunniff, Attorney General of Texas, Austin,
TX, for Defendants.

Opinion

ORDER GRANTING DEFENDANTS' PARTIAL MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM AND ORDER OF PARTIAL DISMISSAL

ROBINSON, J.

*1 On this day came for consideration defendants' December 11, 2003 and February 23, 2004 Partial Motions to Dismiss for Failure to State a Claim, as well as plaintiff's January 8, 2004, and March 15, 2004 motions to inform the court of the exact capacities in which the defendants are sued.

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a court to dismiss a claim on the basis of a dispositive issue of law. All well-plead facts are accepted as true and are viewed in the light most favorable to the plaintiff. *Doe v. Hillsboro Independent School Dist.*, 81 F.3d 1395, 1401 (5th Cir.1996).

By their motions, defendants argue that, to the extent plaintiff is asserting a claim for monetary damages against them in their official capacities, they are shielded by Eleventh Amendment immunity. By his motions to

Footnotes

¹ An exception to this general principle was created in *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), in which

inform the court of the exact capacities in which the defendants are sued, plaintiff states he is suing the defendants in their individual capacities. By his September 4, 2002, amended complaint, plaintiff did not designate whether his claims for monetary relief applied to defendants in their individual or official capacities.

It appears defendants' motions for dismissal of plaintiff's claims for monetary damages against them in their official capacities are unopposed.

In any event, the Eleventh Amendment bars suit against a state or a state official unless the State has waived its immunity,¹ *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65-66, 109 S.Ct. 2304, 2309, 105 L.Ed.2d 45 (1989); and grants the States an immunity from retroactive monetary relief, *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). A suit against an official in his or her official capacity is actually a suit against the state. *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358, 361-62, 116 L.Ed.2d 301 (1991); *Sanders v. English*, 950 F.2d 1152, 1158 (5th Cir.1992). Consequently, any claim for monetary relief against defendants in their official capacities is barred by the Eleventh Amendment

CONCLUSION

Accepting all well-plead facts as true and viewing them in the light most favorable to the nonmovant, the District Judge FINDS plaintiff would not be entitled to monetary relief from defendants in their official capacities under any set of facts or any possible theory that he could prove consistent with the allegations in the complaint. *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir.1999).

Defendants' December 11, 2003 and February 23, 2004 Partial Motions to Dismiss for Failure to State a Claim are GRANTED. Plaintiff's claims for monetary relief against defendants in the official capacities are DISMISSED.

IT IS SO ORDERED.

Plaintiff's claims against the defendants in their individual capacities survive this Order.

This Order terminates documents numbered 37, 39, and 51 on the docket of this case.

Purvis v. D'Omingues, Not Reported in F.Supp.2d (2004)

the Supreme Court held that a suit for prospective injunctive relief, challenging the constitutionality of a state official's action in enforcing state law, is not one against the State. *Id.*, at 159–160, 28 S.Ct., at 453–54. *See, also, Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974)(the Eleventh Amendment grants the States an immunity from retroactive monetary relief, but state officers are not immune from prospective injunctive relief).