

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HEATH MESHELL, *et al.*,
Plaintiffs,

vs.

NOBLE DRILLING SERVICES, INC., *et al.*,
Defendants.

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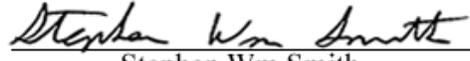
CIVIL ACTION H-05-1690

MEMORANDUM AND RECOMMENDATION

Defendants Noble Drilling Services, Inc. and Noble Drilling Inc. have filed a motion to dismiss, under Federal Rule of Civil Procedure 12(b)(6), that portion of plaintiff Heath Meshell’s complaint asserting a claim for intentional infliction of emotional distress (Dkt. 6). Meshell acknowledges this particular cause of action must be dismissed, agreeing with the defendants that the claim is precluded by the Texas Supreme Court’s holding in *Hoffman-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 448 (Tex. 2004). *See* Dkt. 13. In that case it was declared that “[i]f the gravamen of a plaintiff’s complaint is the type of wrong that the statutory remedy was meant to cover, a plaintiff cannot maintain an intentional infliction claim regardless of whether he or she succeeds on, or even makes, a statutory claim.” 144 S.W.3d at 448. Accordingly, the court recommends the motion be granted and the claim for intentional infliction of emotional distress be dismissed.

The parties have ten days to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. Civ. P. 72.

Signed on August 2nd, 2005, at Houston, Texas.



Stephen Wm Smith
United States Magistrate Judge