

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50988

Summary Calendar

ROBERT F. RULE; CHERIE RULE,

Plaintiffs-Appellees,

versus

RALPH LOPEZ, Etc; ET AL,

Defendants,

MIKE CARRILLO, Bexar County Deputy Sheriff in his individual capacity; DENNIS DOUGLAS, Bexar County Deputy Sheriff in his individual capacity,

Defendants-Appellants.

Appeal from the United States District Court
For the Western District of Texas
USDC No. SA-00-CV-847

May 3, 2002

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Bexar County Deputy Sheriffs Mike Carillo and Dennis Douglas appeal the district court's denial of their motion for summary judgment on qualified immunity grounds in this § 1983 case based on

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

alleged violations of the Fourth Amendment through the use of excessive force resulting from a warrantless entry. We notice the issue of our jurisdiction *sua sponte* and dismiss the appeal.

We have no appellate jurisdiction to determine whether there is a genuine issue of fact, but only whether those issues of fact are material, that is whether, after reviewing the complaint and record,¹ "assuming that all of [the plaintiffs'] factual assertions are true, those facts are materially sufficient to establish that defendants acted in an objectively unreasonable manner."² We have reviewed the plaintiffs' complaint and the summary judgment record and conclude that, taking all of the plaintiffs' allegations as true, the issues of fact found by the district court are material and we are without jurisdiction.

DISMISSED.

¹ *Chiu v. Plano Independent Sch. Dist.*, 260 F.3d 330, 341 (5th Cir. 2001).

² *Wagner v. Bay City*, 227 F.3d 316, 320 (5th Cir. 2000).