

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50498
Summary Calendar

RICHARD CONNER; CHRIS CONNER,

Plaintiffs-Appellees,

versus

TRAVIS COUNTY TEXAS, ET AL.,

Defendants,

TRAVIS COUNTY TEXAS; JOHN DOES 1 TO 10;
FRED MCAFEE, Travis County Sheriff's Deputy,

Defendants-Appellants.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 95-CV-648
- - - - -

June 16, 1997

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:*

As an initial matter, this court must address the basis of its jurisdiction over this appeal. Cantu v. Rocha, 77 F.3d 795, 802 (5th Cir. 1996). With respect to the portion of the appeal challenging the denial of summary judgment based on McAfee and

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Keel's qualified and official immunity, the order is immediately appealable as based on an issue of law despite the district court's determination that disputes of fact remain. Id. at 804; Behrens v. Pelletier, 116 S. Ct. 834, 840 (1996); Johnson v. Jones, 115 S. Ct. 2151, 2159 (1996).

The district court did not err by denying summary judgment on the issues of qualified immunity. Viewing the evidence in the light most favorable to Conner, there is a genuine issue of material fact whether McAfee and Keel's conduct was objectively reasonable or in good faith. See Nerren v. Livingston Police Dept., 86 F.3d 469, 472-74(5th Cir. 1996); Baker v. Putnal, 75 F.3d 190, 199 (5th Cir. 1996); City of Lancaster v. Chambers, 883 S.W.2d, 650, 656 (Tex. 1994).

APPEAL DISMISSED IN PART, AFFIRMED IN PART.