

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-21053

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SHERRY MONSANTO,

Plaintiff,

versus

HARRIS COUNTY; ET AL.,

Defendants,

HARRIS COUNTY;  
DICK MOORE, Constable,

Defendants-  
Third Party Plaintiffs-  
Appellants,

versus

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY,

Third Party Defendant-  
Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(No. H-98-CV-3700)

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June 14, 2002

Before JOLLY and PARKER, Circuit Judges, and MILLS,\* District Judge.

PER CURIAM:\*\*

On State Farm's petition for declaratory relief, the judgment of the district court is AFFIRMED. Judges Jolly and Parker affirm on the ground that neither State Farm nor its employee Sherry Monsanto violated § 38.16 of the Texas Penal Code. Judge Mills would affirm on the ground that § 38.16 is unconstitutional.

The district court's finding that the county's motion for summary judgment was frivolous is REVERSED, this court having determined that the motion was a proper vehicle for resolution of State Farm's claims. Consequently, the district court's award of attorney's fees for State Farm's having to contest the motion is VACATED.

AFFIRMED in part, REVERSED and VACATED in part.

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\* District Judge of the Central District of Illinois, sitting by designation.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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