

April 15, 2003

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 02-41162

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JAMELL KALIMAH, Individually and as administrator of the  
Estate of Cathey Jo Howard-Kalimah Deceased and as next  
friend of Syed A. Kalimah and Regyna Q. Howard, Minors; ANNIE  
MARIE MCDONALD; RUDOLPH WINFRED MCDONALD,

Plaintiffs-Appellees,

VERSUS

MCKINNEY, TEXAS, CITY OF; ET AL.,

Defendants,

JOYCE VANDERTUIN,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Eastern District of Texas, Marshall  
2:02-CV-22-TJW

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Before DAVIS, HALL\* and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*\*

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\*Circuit Judge for the Ninth Circuit, sitting by designation.

\*\*Pursuant to 5<sup>TH</sup> 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

For essentially the reasons stated by the district court in its Order of August 2, 2002, we agree that the district court correctly found that disputed issues of material fact are present which required it to deny Officer Vandertuin's motion for summary judgment based on qualified immunity. We therefore have no jurisdiction to review the district court's order.

APPEAL DISMISSED.