

March 1, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 04-21027

PAUL REX; TOM CONKLIN,

Plaintiffs - Appellees,

versus

RONNIE CHUMLEY, ET AL.,

Defendants,

RONNIE CHUMLEY; PATSY WILLIAMS,

Defendants - Appellants.

Appeal from the United States District Court
for the Southern District of Texas, Houston
USDC No. 4:04-CV-3195

Before JOLLY, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

The initial question in this appeal is whether we have jurisdiction over the District Court's denial of the Defendants' motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. We have appellate jurisdiction only if that ruling denied the Defendants' claim for qualified immunity on some legal ground. See Hatfield v. Scott, 306 F.3d 223, 225 (5th Cir. 2002). On the basis of the pleadings and record before us, we are unable

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to make that determination. We therefore dismiss the appeal and remand the case to the District Court for further proceedings.

APPEAL DISMISSED.