

March 2, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40212  
Summary Calendar

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JAY GRIFFITH,

Plaintiff-Appellant,

versus

JONATHAN PERKINS, in his official capacity;  
CITY OF SANGER TEXAS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:01-CV-292  
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Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Jay Griffith was issued a speeding ticket by Jonathan Perkins, a police officer for the City of Sanger, Texas (the City). Griffith filed suit against Perkins and the City alleging that Perkins violated his constitutional rights by acting as a police officer without having filed the necessary oath of office with the Secretary of State of Texas. The district court dismissed the claims against Perkins, granted summary judgment in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

favor of the City, and awarded the City attorney's fees pursuant to 42 U.S.C. § 1988. Griffith contests that award.

The district court granted summary judgment against Griffith because he failed to present a prima facie case. Griffith's appeal of the summary judgment was dismissed for failure to prosecute. Griffith v. Perkins, No. 03-41040 (5th Cir. Nov. 4, 2003) (unpublished) The district court did not abuse its discretion in awarding attorney's fees to the City because Griffith failed to present a prima facie case of liability by the City. See Myers v. City of West Monroe, 211 F.3d 289, 293 (5th Cir. 2000).

Griffith argues that the district court made an evidentiary error in awarding attorney's fees because the fee information was not submitted by a valid affidavit. This claim is raised for the first time on appeal and will not be considered. Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

The ruling of the district court is AFFIRMED.