

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 9, 2013

Lyle W. Cayce
Clerk

No. 12-51057

JOSE VASQUEZ, As Personal Representative
of the Estate of Sergio Vasquez, Deceased;
HEATHER LAUREL, also known as Helen
Vasquez, Guardian of V.A.V., a minor,
Heir of the Estate of Sergio Vasquez;
RICK STONE,

Plaintiffs - Appellants

v.

THE BOILER ROOM;
FT AVILA & IV ENTERPRISES, INCORPORATED;
RL WORTH & ASSOCIATES;
DEPUTY ARNOLD MENCHACA;
SHERIFF AMADEO ORTIZ; BEXAR COUNTY,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:11-CV-920

Before JONES, SMITH and GARZA, Circuit Judges.

PER CURIAM:*

The court, having heard oral argument and reviewed the parties' briefs and the record on appeal, holds that there is no reversible error of fact or law.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-51057

1. Stone's claim is time barred because he filed it after the two-year statute of limitations had expired. The limitation period began to run on the date Stone was shot, even though he did not know the true identity of the wrongdoer. *Childs v. Haussecker*, 974 S.W.2d 31, 36, 40 (Tex. 1998). Stone's fraudulent concealment argument is waived because it was not pursued in the district court. *LeMarie v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 387 (5th Cir. 2007).
2. Menchaca was entitled to qualified immunity under well-settled Circuit precedent. *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 380. Vasquez' actions posed a serious threat to those around him, and it was reasonable for Menchaca to use deadly force. *See Id.* at 385.
3. The district court properly dismissed Vasquez' premises liability and negligent hiring, supervision, and training claims against RL Worth because Vasquez did not point the court to any evidence supporting these claims.

The judgment of the district court is **AFFIRMED**.