IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No.93-1051
Summary Calendar

LEVI WOODERTS, JR.,

Plaintiff-Appellee,

v.

CITY OF DALLAS, TEXAS, ET AL.,

Defendants,

J. MISMASH and D.O. GILMORE,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas
(CA3-91-0951-R)

(November 24, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

This case is on appeal to our court for the second time, having previously been remanded for the district court to consider the impact of the police officers' request for admissions to appellee Levi Wooderts. At that time, the request had been

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

unanswered. The district court accepted Wooderts's late-filed answers, but he again denied a summary judgment on immunity. The police officers have again appealed, asserting they are entitled to qualified immunity under standards applicable to their conduct at the time it occurred. We agree, and so reverse and remand the case to the trial court with instructions to dismiss.

Wooderts was arrested August 31, 1989, following a one-hour pursuit by the police in a densely wooded area. He filed this section 1983 suit alleging that the two police officers, Mismash and Gilmore, used excessive force and beat him up although he did not resist arrest. The only injuries he alleges are scratches to the face and contusions on his legs. Wooderts's signed his complaint under penalty of perjury. The police officers moved for summary judgment, attaching affidavits that described in detail the events leading up to the arrest and denied that the officers had deployed any more force than was reasonably necessary to cause Wooderts to submit.

In its decision on remand, the district court confined himself to addressing the specific question concerning requests for admissions that this court had posed. He did not actually determine whether the clash in stories represented by Wooderts's complaint and the officers' response permitted a grant of summary judgment on qualified immunity. Attending to that task now, we find the basis for qualified immunity satisfied.

At the time Mismash and Gilmore participated in apprehending Wooderts, the law of this circuit permitted a section

1983 excessive force claim to go forward upon allegations of a significant injury; which resulted from the use of force that was clearly excessive to the need; and which excessiveness of force was objectively unreasonable. Johnson v. Morel, 876 F.2d 477, 480 (5th Cir. 1989) (en banc). The standard for qualified immunity in these cases is to be determined by the law at the time of the challenged official conduct. Pfannstiel v. City of Marion, 918 F.2d 1178, 1185 (5th Cir. 1990). Although the significant injury prong of an excessive force claim has subsequently been revised by the Supreme Court and this court for some purposes, it was a critical part of the cause of action at the time Wooderts was arrested. In this case, Wooderts has failed to demonstrate that a genuine issue of material fact exists that he was significantly injured by the officers' arrest methods. His verified complaint states only that he suffered cuts, bruises and unspecified other ailments that apparently were not even medically treated. Without proof of significant injury, Wooderts could not establish that the officers were violating plainly established law at the time they arrested him. Wise v. Carlson, 902 F.2d 417 (5th Cir. 1990); Wisniewski v. Kennard, 901 F.2d 1276, 1277 (5th Cir. 1990).

Thus, even if appellee's verified complaint creates some kind of issue with respect to the unreasonableness of the force used by the officers, it founders by failing to allege that he suffered any significant injury. Further, this case has been pending since April, 1991, and Wooderts, even though a pro se plaintiff, has had ample opportunity to present evidence of the

nature of his injuries. Not only did he not do so, he never even responded to the officers' motions for summary judgment.

The case is **REVERSED** and **REMANDED** with instructions to **DISMISS** with prejudice appellee's section 1983 claim.