

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1233
Conference Calendar

FANNIE LOCKETT, individually as well
as the Representative of the Estate of
Ronald Coble, III, Deceased Minor, and
RONALD COBLE, JR.,

Plaintiffs-Appellees,

versus

MARK REINHARDT, Individually, ET AL.,

Defendants,

MARK REINHARDT, Individually,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:91-CV-232-Y
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Although an order denying a motion for summary judgment based on a claim of qualified immunity in a 28 U.S.C. § 1983 action is immediately appealable to the extent that it turns on an issue of law, Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985), if disputed factual issues

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

material to immunity are present, the district court's denial of summary judgment sought on the basis of immunity is not appealable. Feagley v. Waddill, 868 F.2d 1437, 1439 (5th Cir. 1989).

There are disputed factual questions regarding whether Reinhardt's use of force was objectively reasonable and, if so, whether the force used was excessive to the point of being objectively unreasonable. See Johnson v. Morel, 876 F.2d 477, 479-80 (5th Cir. 1989)(en banc). The summary-judgment evidence submitted by Reinhardt raises, rather than dispels, genuine issues of material fact. Additionally, evidence offered by the plaintiffs in opposition to Reinhardt's motion for summary judgment raises genuine issues of material fact. The district court's denial of summary judgment sought on the basis of qualified immunity is therefore not appealable. Feagley, 868 F.2d at 1439. Accordingly, we are without jurisdiction. The appeal is DISMISSED. The motion for extension of time to file a reply brief is GRANTED.