

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1265
Conference Calendar

ORESTUS CAVNESS,

Plaintiff-Appellee,

versus

M.W. DEAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:87-CV-0175-T
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

M. W. Dean has appealed the district court's denial of his motion for summary judgment based on qualified immunity in this civil rights lawsuit which alleged that Dean wrongly arrested Orestes Cavness and used excessive force during the arrest.

An order denying a motion for summary judgment based on a claim of qualified immunity in a 42 U.S.C. § 1983 action is immediately appealable, to the extent that it turns on an issue of law. See Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S.Ct.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

2806, 86 L.Ed.2d 411 (1985). However, if the claim of immunity is based on disputed issues of material fact, the district court's denial of a motion for summary judgment sought on the basis of immunity is not appealable. Lampkin v. City of Nacogdoches, 7 F.3d 430, 431 (5th Cir. 1993), citing Feagley v. Waddill, 868 F.2d 1437, 1439 (5th Cir. 1989).

As Cavness and Dean offer conflicting evidence concerning material facts related to the arrest, the district court's order is not appealable, and the appeal is DISMISSED.