

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1351  
Summary Calendar

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HAROLD P. BENNETT, Individually  
and as Administrator of the  
Estate of Quinten Payne Bennett,  
Deceased, and Suella Simmons,

Plaintiffs-Appellees,

versus

SHERMAN COUNTY, TEXAS, ET AL.,

Defendants,

JACK HAILE, Individually and  
as Sheriff of Sherman County,  
Texas

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(2:92-CV-150)

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(December 15, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Appellant Jack Haile, sheriff of Sherman County, Texas,  
objects to the district court's failure to grant summary judgment

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

on his claim of qualified immunity. His motion was filed prematurely, and the district court correctly rejected it at this stage of the proceedings. We have no jurisdiction over this appeal and therefore dismiss.

Under Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S. Ct. 2806 (1985), this court has jurisdiction over an appeal from the denial of qualified immunity only to the extent that it turns on an issue of law.

This motion for summary judgment turned not on a question of law but on the inadequate factual development of the case. Insofar as the case relates to Sheriff Haile, the only party presently entitled to assert qualified immunity, Sheriff Haile had blocked discovery by refusing to appear for depositions three times. On the third time, the court granted in part and denied in part his motion for protective order. The court required plaintiffs to file a more specific complaint, which they did, and it stayed discovery until that was accomplished. Plaintiffs' second amended complaint states factual issues concerning the sheriff's alleged policy making or direct involvement in Quinten Bennett's suicide. Whether there is any merit to these complaints, we do not know. We do know that discovery is permissible on the issues related to qualified immunity. Lion Boulos v. Wilson, 834 F.2d 504 (5th Cir. 1987). Given the procedural status of the case, the court was correct to deny summary judgment at this juncture.

The appeal is accordingly DISMISSED.