

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1679
Summary Calendar

WAYNE KNOWLES, ET AL.,

Plaintiffs-Appellees,

versus

CALLAHAN COUNTY, TEXAS,

Defendant-Third Party
Plaintiff-Appellant,

versus

BILL W. SKINNER,

Third Party Defendant-
Appellee.

Appeal from the United States District Court for
the Northern District of Texas
(1:92-CV-0098-C)

(April 26, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Deputies Wayne Knowles, Rod Waggoner and John Clay Woods sued Callahan County under the Fair Labor Standards Act for overtime pay. The county added Sheriff Skinner as a third-party

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

defendant for contribution and/or indemnity. Prior to submitting the case to the jury, the district court dismissed the complaint against Sheriff Skinner as a matter of law. The county appeals the dismissal of Skinner and protests the exclusion of evidence by the district court.

DISCUSSION

The county complains that Sheriff Skinner should have granted compensatory time off to the appellee-Deputies, rather than allowing them to work longer hours and seek overtime pay. The district court correctly ruled that the county does not state a cause of action against the Sheriff. The Sheriff's decisions as to deployment of officers are within his discretion and judgment. See Weber v. City of Sachse, 591 S.W.2d 559, 567 (Tex. Civ. App.--Dallas 1979, writ disp'd). The county has proffered no authority to support its position that the sheriff should indemnify the county. Furthermore, public officers and employees are generally not personally liable for acts performed within the scope of their duties. Richardson v. Thompson, 390 S.W.2d 830, 834 (Tex. Civ. App.--Dallas 1965, writ ref'd n.r.e).

The county also argues that the district court improperly excluded evidence of business records and a personal friendship that existed between the sheriff and one of the deputies. We will reverse an evidentiary ruling only when the district court has clearly abused its discretion and a substantial right of a party has been affected. Rock v. Huffco Gas & Oil Co., Inc., 922 F.2d 272, 277 (5th Cir. 1991). The district court's exclusion

was not an abuse of discretion, but was a reasoned decision based on the fact that the prejudicial effect of the evidence substantially outweighed its probative value.

AFFIRMED.