

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8664

Summary Calendar

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SUSAN GUMTOW, ET AL.,

Plaintiffs,

KEVIN SORRELLS,  
(DAN T. SORRELLS and GLADYS B. SORRELLS, as the  
personal representative of appellant KEVIN SORRELLS,  
for substitution in place and instead of appellant  
KEVIN SORRELLS, deceased),

Plaintiffs-Appellants,

versus

J. R. HERZOG, ET AL.,

Defendants-Appellees,

versus

DAN T. SORRELLS,

Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(A-92-CA-119-SS)

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(July 6, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Kevin Sorrells and other plaintiffs, all represented by Dan Sorrells, filed suit under 42 U.S.C. § 1983 alleging among other things that they received speeding tickets from the City of San Marcos, Texas in violation of state law, that they were arrested without warrants or probable cause, and that the arresting officers used excessive force in effecting the arrests. After a jury trial the district court directed the verdict for the defendants. The court concluded that plaintiffs' claim that the speed limit in San Marcos did not conform to state law provided an inadequate basis for a claim under § 1983, that the arresting officers executed the arrests pursuant to facially valid warrants, and that the officers neither used excessive force nor caused an injury compensable under § 1983.

Defendants' counsel moved for an award of attorney's fees and costs in the amount of \$19,807.51 against Kevin Sorrells. Concluding that both Kevin and Dan Sorrells, his attorney, were aware of the weakness of the case before they brought it, the district court awarded fees and costs against the two jointly and severally in the amount of \$9,500. We review the district court's award of attorney's fees for abuse of discretion and accept its underlying findings of fact unless clearly erroneous.<sup>1</sup>

The plaintiffs either acknowledged in each case that there was a warrant for their arrest or the defendants' counsel established

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<sup>1</sup> United States v. Mississippi, 921 F.2d 604, 609 (5th Cir. 1991).

the existence of a warrant.<sup>2</sup> Plaintiffs did not allege an adequate factual basis for a claim under § 1983 for use of excessive force during arrest. Plaintiffs rely on a case allowing a claim under § 1983 for the issuance of warrants without a proper finding of probable cause<sup>3</sup> to support their claim that a local speed limit that did not conform to state law somehow violated their constitutional rights. Each aspect of plaintiffs' case was devoid of merit. The district court did not abuse its discretion by awarding sanctions to the defendants. Plaintiffs do not contest the amount of the award.

AFFIRMED.

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<sup>2</sup> See Simons v. Clemons, 752 F.2d 1053, 1055 (5th Cir. 1985) (holding that arrest executed pursuant to facially valid warrant does not give rise to claim under § 1983).

<sup>3</sup> See Crane v. Texas, 759 F.2d 412 (5th Cir.), cert. denied, 474 U.S. 1020 (1985) (en banc).