IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60485
Conference Calendar

PAUL ANDREW MOLY and
CRISTELLA ANN MOLY,

Plaintiffs-Appellants,

versus

RUSSELL MORRIS ET AL.

Defendants

KEN CONWAY, Individually and
as employee of the County of
Cameron and COUNTY OF CAMERON,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. 92-CV-47
- - - - - - - - - -
August 23, 1995

Before KING, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:*

Paul and Cristella Moly (appellants) appeal the district court's dismissal, under Fed. R. Civ. P. 12(b)(6), of their claims against defendant Cameron County, Texas (County),

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

contending that Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160, 1162-63 (1993) (holding that heightened pleading standard could not be required of plaintiffs in 1983 suits against municipalities), should be applied retroactively.** They have abandoned their appeal regarding defendant Ken Conway. Appellants do not challenge the district court's dismissal based on the inapplicability of respondeat superior.

This court reviews the district court's ruling on a Rule 12(b)(6) motion de novo. Jackson v. City of Beaumont Police Dep't, 958 F.2d 616, 618 (5th Cir. 1992). A Rule 12(b)()6) dismissal will be affirmed only if "it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." McCormack v. National Collegiate Athletic Ass'n, 845 F.2d 1338, 1343 (5th Cir. 1988) (internal quotation and citation omitted). In reviewing a Rule 12(b)(6) dismissal, the allegations of the complaint are taken as true; however, this court does not assume facts not alleged. Id.

A local governing body "may be liable under § 1983, . . ., where the alleged unconstitutional activity is inflicted pursuant to official policy." Johnson v. Moore, 958 F.2d 92, 93 (5th Cir. 1992). The district court's dismissal under Rule 12(b)(6) was

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** The plaintiffs also implicitly argue that the district court erred when denying their Rule 60(b) motion which sought seeking reinstatement of the claims dismissed under Rule 12(b)(6).

proper because the appellants did not allege the violation of any County custom or policy.

The district court's dismissal of the appellants' claim regarding the County's failure to train, supervise, or control defendant Morris was also proper. Success on a failure-to-train allegation requires a showing of a deliberately indifferent policy of training that was closely related to the violation of a federally protected right. Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 453 (5th Cir.) (en banc), cert. denied, 115 S. Ct. 70 (1990). The appellants' complaint does not allege facts evincing a deliberately indifferent policy of training which was closely related to the harm suffered. Appellants do not argue to the contrary.

Further, although the appellants argue that this court should apply Leatherman retrospectively, they have not shown that, even if Leatherman were so applied, the result of this appeal would be any different.

AFFIRMED.