

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-10449  
Conference Calendar

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DAVID R. CALLAWAY,

Plaintiff-Appellant,

versus

RACETRAC PETROLEUM, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:95-CV-388-P  
- - - - -  
(October 18, 1995)

Before POLITZ, Chief Judge, and REAVLEY and SMITH, Circuit Judges.

PER CURIAM:\*

To obtain relief under § 1983 a plaintiff must prove that he was deprived of a right under the Constitution or laws of the U.S. and that the person depriving him of that right acted under color of state law. Resident Council of Allen Parkway Village v. United States Dep't of Housing & Urban Dev., 980 F.2d 1043, 1050 (5th Cir.), cert. denied, 114 S. Ct. 75 (1993). Individuals are acting under color of state law "only when it can be said that

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

the State is responsible for the specific conduct of which the plaintiff complains." Daique v. Opelousas Health Care, Inc., 774 F.2d 1344, 1349 (5th Cir. 1985).

David R. Callaway has alleged no facts to establish that Racetrac Petroleum, Inc. (Racetrac), his former employer, is acting under color of state law. Callaway's assertions that the management falsely accused him of theft and verbally harassed him are private in nature, and the state cannot be considered responsible for this conduct by Racetrac. Therefore, Callaway has failed to state a viable claim for relief. See id.

Racetrac Petroleum, Inc.'s motion to dismiss Callaway's appeal is DENIED.

AFFIRMED.