

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 95-41028

(Summary Calendar)

JOHN M BUSHMAN, not individually but as
Trustee for the C & J Revocable Trust,

Plaintiff-Appellant,

versus

CITY OF CORINTH,

Defendant-Appellee.

Appeal from the United States District Court
For the Eastern District of Texas
(4:94-CV-191)

August 30, 1996

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

John M. Bushman, as Trustee for the C & J Revocable Trust, appeals the district court's order of summary judgment upholding the constitutionality of a zoning ordinance enacted by the City of Corinth. After an independent review of the record, we can find no

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

genuine issue of material fact. The City's refusal to grant appellant a special use permit was rationally related to its legitimate interest in preventing the open display of goods and merchandise and the noise and movement of large trucks needed to transport mobile homes in and out of the area. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); *Howard v. City of Garland*, 917 F.2d 898 (5th Cir. 1990). Accordingly, the City was entitled to judgment as a matter of law. Because appellant is not a prevailing party under 42 U.S.C. § 1983, the district court did not err by failing to award him attorneys' fees.

For the foregoing reasons, the judgment of the district court is AFFIRMED.