

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20433
Conference Calendar

MICHAEL EDDINGS; SHIRLEY EDDINGS,

Plaintiffs-Appellants-Cross-Appellees,

versus

HARRIS COUNTY; ET AL.,

Defendants,

HARRIS COUNTY; JOHNNY KLEVENHAGEN;
TOMMY B. THOMAS,

Defendants-Appellees,

ROCKY BARR,

Defendant-Appellee-Cross-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-95-CV-4150
- - - - -

ON PETITION FOR REHEARING

July 8, 1999

Before JONES, SMITH, and DUHE', Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed by appellant Rocky Barr is GRANTED, and the Conference Calendar opinion is modified in the following respects.

The dismissal of the appeal for lack of jurisdiction pursuant to Fed. R. Civ. P. 54(b) applies only to Shirley Eddings' appeal from the denial of her Monell* claim. Shirley Eddings has not filed a petition for rehearing and that portion of the original Conference Calendar opinion remains unchanged.

This court is also without jurisdiction to review the denial of Barr's motion for summary judgment based on qualified immunity with regard to Shirley Eddings' excessive-force claim. District court orders denying summary judgment on the basis of qualified immunity are immediately appealable under the collateral order doctrine, notwithstanding their interlocutory character, when based on a conclusion of law. See Mitchell v. Forsyth, 472 U.S. 511, 530 (1985). In contrast, such orders are not immediately appealable if they are based on sufficiency of the evidence. See Johnson v. Jones, 515 U.S. 304, 313 (1995). Because there is a significant fact-related dispute with regard to the circumstances surrounding the detention and arrest of Shirley Eddings, this court does not have jurisdiction to review the denial of Barr's motion for summary judgment based on qualified immunity with regard to Shirley Eddings' excessive-force claim. Id.

APPEAL DISMISSED FOR LACK OF JURISDICTION.

* Monell v. Department of Soc. Servs. of City of New York, 436 U.S. 658, 690-91 (1978).