

December 1, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50197

RANDY BENAVIDES BALDERAS

Plaintiff - Appellee-Cross-Appellant

v.

ATASCOSA COUNTY TEXAS; ATASCOSA COUNTY SHERIFF'S DEPARTMENT;
TOMMY WILLIAMS, Sheriff, Individually and in his official
capacity as Sheriff for Atascosa County

Defendants - Appellants-Cross-Appellees

Appeals from the United States District Court
for the Western District of Texas
No. A:01-CV-668-RP

Before KING, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

The district court's conclusions that the employment of plaintiff Randy Balderas was terminated by defendant Sheriff Tommy Williams and that Balderas's obligation to perform service in a uniformed service was a motivating factor in that termination are not clearly erroneous. Further, the district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court did not err in finding that Balderas adequately mitigated damages. Finally, the district court did not err in concluding that the defendants failure to comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq., was not willful. Although the defendants took the tack that Balderas was not terminated, the record reflects that reasons in addition to his service in a uniformed service entered into the decision to terminate Balderas, and the district court could properly take those reasons into consideration when deciding whether the defendants acted willfully. The defendants other arguments on appeal are meritless.

The judgment of the district court is AFFIRMED.