

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1605
Summary Calendar

HAROLD B. CORNISH,

Plaintiff-Appellee,

versus

CITY OF DALLAS, TEXAS,

Defendant-Appellant.

* * * * *

JAMES ALLEN, JR., ET AL.,

Plaintiffs-Appellees,

versus

CITY OF DALLAS, ET AL.,

Defendants,

CITY OF DALLAS, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for
the Northern District of Texas
(3:87-CV-2431-H c/w 88-2742)

(May 25, 1994)

Before REAVLEY, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:*

*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

BACKGROUND

The appellant, City of Dallas, seeks to recover attorney's fees under 42 U.S.C. § 1988 based on the contention that the appellees' Civil Rights cause of action was frivolous, unreasonable and without foundation. The district court denied the city's request.

The appellees are six black police officers who were employed by the Dallas Police Department. The officers alleged that several racially discriminatory actions, including disciplinary reprimands, demotions and disparate transfers, were instituted against them by the city of Dallas. The district court granted summary judgment in favor of the city on the Title VII claims and dismissed the officers' remaining claims. The officers appealed and we affirmed the district court's judgment on the basis of its well reasoned memorandum opinion. The city now appeals the district court's subsequent denial of attorney's fees. We affirm.

DISCUSSION

We review awards or denials of attorney's fees for abuse of discretion. United States v. State of Miss., 921 F.2d 604, 609 (5th Cir. 1991). The Supreme Court stated in Christiansburg Garment Co. v. E.E.O.C., 98 S. Ct. 694, 701 (1978) that "a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable,

profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

or groundless, or that the plaintiff continued to litigate after it clearly became so." The city complains that the officers' claims were groundless because the officers did not present evidence to support their claims and that "they did not take even one deposition during the course of the pending litigation."

A failure to take depositions, however, does not necessarily render an action frivolous, unreasonable or groundless. Mylett v. Jeane, 910 F.2d 296, 299 (5th Cir. 1990). Furthermore, the district court's opinion demonstrates that the officers did submit evidence in support of their claims, but it was not substantial enough to defeat summary judgment. Although we agree with the district court that "some of the plaintiffs' claims come dangerously close to violating the Christiansburg standard," the district court, which carefully considered all the evidence submitted on summary judgment, determined that the claims were not "wholly without foundation." The court's denial of attorney's fees was not an abuse of discretion.

AFFIRMED.