

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

August 9, 2013

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 12-51057  
\_\_\_\_\_

JOSE VASQUEZ, As Personal Representative  
of the Estate of Sergio Vasquez, Deceased;  
HEATHER LAUREL, also known as Helen  
Vasquez, Guardian of V.A.V., a minor,  
Heir of the Estate of Sergio Vasquez;  
RICK STONE,

Plaintiffs - Appellants

v.

THE BOILER ROOM;  
FT AVILA & IV ENTERPRISES, INCORPORATED;  
RL WORTH & ASSOCIATES;  
DEPUTY ARNOLD MENCHACA;  
SHERIFF AMADEO ORTIZ; BEXAR COUNTY,

Defendants - Appellees

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:11-CV-920  
\_\_\_\_\_

Before JONES, SMITH and GARZA, Circuit Judges.

PER CURIAM:\*

The court, having heard oral argument and reviewed the parties' briefs and the record on appeal, holds that there is no reversible error of fact or law.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-51057

1. Stone's claim is time barred because he filed it after the two-year statute of limitations had expired. The limitation period began to run on the date Stone was shot, even though he did not know the true identity of the wrongdoer. *Childs v. Haussecker*, 974 S.W.2d 31, 36, 40 (Tex. 1998). Stone's fraudulent concealment argument is waived because it was not pursued in the district court. *LeMarie v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 387 (5th Cir. 2007).
2. Menchaca was entitled to qualified immunity under well-settled Circuit precedent. *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 380. Vasquez' actions posed a serious threat to those around him, and it was reasonable for Menchaca to use deadly force. *See Id.* at 385.
3. The district court properly dismissed Vasquez' premises liability and negligent hiring, supervision, and training claims against RL Worth because Vasquez did not point the court to any evidence supporting these claims.

The judgment of the district court is **AFFIRMED**.