

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

United States Court of Appeals
Fifth Circuit

FILED

May 20, 2010

No. 09-10779

Lyle W. Cayce
Clerk

DANIEL F RHODES,

Plaintiff - Appellee

v.

CITY OF ARLINGTON,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CV-2343

Before REAVLEY, WIENER,* and SOUTHWICK, Circuit Judges.

PER CURIAM:**

This appeal is dismissed for want of jurisdiction.

Because there is a fact dispute about negligence or intent, if any, to be proven, there is no collateral order that warrants interlocutory jurisdiction. *See Cantu v. Rocha*, 77 F.3d 795 (5th Cir. 1996). Furthermore, the fingerprint cards are tangible property, leaving no legal issue presented in view of the order appealed, where the court denied judgment because there is a fact issue whether

* Judge Wiener concurs in the result.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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negligent use of the fingerprint card caused Rhodes's injury. *See Kinney v. Weaver*, 367 F.3d 337, 348 (5th Cir. 2004).

APPEAL DISMISSED.