

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10365
Conference Calendar

SWINETTA BENTRELL MARSH, By her next friend Stella Marsh Locke

Plaintiff-Appellant,

versus

DALLAS INDEPENDENT SCHOOL DISTRICT, *Et Al.*,

Defendants

DALLAS INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-2255-R
- - - - -

October 23, 1997

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Swinetta Bentrell Marsh appeals the granting of defendant Dallas Independent School District's ("DISD") motion for summary judgment on Marsh's sexual harassment claims under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688. The district court granted summary judgment for defendant DISD because it concluded that Marsh had failed to allege facts

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sufficient to impose liability on defendant DISD under Title IX. The district court based its ruling on this court's recent decisions in Canutillo Independent School District v. Leija, 101 F.3d 393 (5th Cir. 1996), cert. denied, 117 S.Ct. 2434 (1997), Rosa H. v. San Elizario Independent School District, 106 F.3d 648 (5th Cir. 1997), and Doe v. Lago Vista Independent School District, 106 F.3d 1223 (5th Cir. 1997), petition for cert. filed, 65 USLW 3799 (U.S. May 23, 1997)(No. 96-1866). Marsh argues that the relied-upon cases are not controlling law in the instant case or, alternatively, should be overruled.

Marsh fails to demonstrate, however, that the cases relied upon by the district court are not controlling or to present any argument that they have been misapplied. Furthermore, even if this panel of the court were so inclined, it could not overrule the decision of a prior panel. Such a decision may only be overruled pursuant to en banc consideration or a superseding contrary decision of the U.S. Supreme Court. In re Dyke, 943 F.2d 1435, 1442 (5th Cir. 1991). Marsh's appeal thus raises no issue of arguable merit. Accordingly, Marsh's appeal is dismissed as frivolous. See 5th Cir. R. 42.2.

APPEAL DISMISSED.