

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JANE DOE, a minor child,	§	
by and through her next friends,	§	
MARY DOE and JOHN DOE;	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 6:23-cv-00566-ADA-JCM
	§	
LORENA INDEPENDENT SCHOOL	§	
DISTRICT and APRIL JEWELL,	§	
Defendants.	§	

OBJECTIONS TO PLAINTIFF’S MOTION FOR LEAVE TO AMEND COMPLAINT

Defendant April Jewell files this her Objections to Plaintiff’s Motion for Leave to Amend Complaint.

NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff pursues two § 1983 claims against Defendant April Jewell (“Defendant Jewell”), both in her “official capacity” and in her “personal capacity,” including 1) Failure to Supervise and 2) Arbitrary and Conscience-Shocking Executive Action under the Fourteenth Amendment. ECF No. 1 at 26-28, ¶¶ 158-68; 30-32, ¶¶ 181-91. On August 30, 2023, Defendant Jewell filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), in relevant part, asserting qualified immunity from Plaintiff’s claims. ECF No. 16. On June 5, 2024, this Court entered an order, in relevant part, denying Defendant Jewell’s Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) based upon qualified immunity. ECF No. 32. On June 11, 2024, Defendant Jewell timely appealed this issue, which is a “final decision” that can be immediately appealed and over which the United States Courts of Appeal have jurisdiction pursuant to 28 U.S.C. § 1291. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Carty v. Rodriguez*, 211 F. App’x 292, 293 (5th Cir.

2006); *Behrens v. Pelletier*, 516 U.S. 299, 307 (1996); *Ashcroft v. Iqbal*, 556 U.S. 662, 662–63 (2009). ECF No. 33. Additionally, the filing of this appeal stays any further proceedings as to Defendant Jewell during the pendency of the appeal. *See Carty*, 211 F. App’x at 293 (ordering that the district court’s docket control order and discovery order were stayed as to the individual defendants appealing on qualified immunity grounds, holding, “‘Immunity, whether qualified or absolute, is an entitlement to be free from the burdens of time-consuming pre-trial matters and the trial process itself.’ *Williams v. Brooks*, 996 F.2d 728, 730 n. 2 (5th Cir. 1993). A district court’s denial of a defense of qualified immunity is immediately appealable, and once an appeal is filed, the district court is divested of its jurisdiction **to proceed against that defendant**. *See id.* at 729–30)” (emphasis added)).

ARGUMENT AND OBJECTIONS

Defendant Jewell objects to Plaintiff’s request for leave to file an amended complaint asserting additional allegations as to her and directly relevant to her qualified immunity while her appeal is pending. Defendant Jewell timely appealed her Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) on qualified immunity grounds, and the case is automatically stayed as to Defendant Jewell. *Carty*, 211 F. App’x at 293. However, during this automatic stay, Plaintiff now seeks to improperly amend the complaint which is the subject of the appeal, adding **only** allegations pertaining to Defendant Jewell and directly relevant to her qualified immunity. *See* proposed Am. Compl. at 2, ¶¶ 4-5; 5-6, ¶¶ 24-33; 22, ¶ 147; 23, ¶ 150; 24, ¶ 156(e); 28-29, ¶¶ 173-174; 29-30, ¶¶ 180-186; 33, ¶ 205; 34, ¶¶ 210-212.

Allowing Plaintiff to add allegations against Defendant Jewell relevant to her qualified immunity at this stage, despite all proceedings being automatically stayed as to Defendant Jewell, would require Defendant Jewell to respond to the amended complaint or be in peril of missing her deadline to respond should her appeal be denied. Requiring Defendant Jewell to file responsive

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pleadings in this Court to allegations pertaining only to her and her qualified immunity while pending an appeal of her qualified immunity would be the exact opposite of staying the case as to Jewell:

“[c]ourts have concluded that district courts **may not continue proceedings for claims that have interlocutory appeals on qualified immunity grounds.** *McFadyen v. Duke Univ.*, No. 1:07-CV-953, 2011 WL 13134315, at *2 (M.D.N.C. June 9, 2011). However, a “notice of appeal from an interlocutory order does not produce a complete divestiture of the district court's jurisdiction over the case; rather, **it only divests the district court of jurisdiction over those aspects of the case on appeal.**” *Alice L. v. Dusek*, 492 F.3d 563, 564-565 (5th Cir. 2007).

Rhoten v. Stroman, No. 1:16-CV-00648, 2020 WL 3545661, at *3 (W.D. Tex. – Waco 2020) (emphasis added).

Defendant Jewell’s 12(b)(6) motion must be decided on the pleadings. *Sonnier v. State Farm Mut. Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007). Defendant Jewell timely appealed the qualified immunity issues based upon the original complaint, and Plaintiff is apparently attempting to moot Defendant Jewell’s appeal, despite the automatic stay which was in place as of Defendant Jewell’s filing of her appeal. *Carty*, 211 F. App’x at 293. The district court is divested of jurisdiction over the qualified immunity issues and the related allegations as to Defendant Jewell as alleged in the original Complaint. *Id.*; *Rhoten*, No. 1:16-CV-00648, 2020 WL 3545661, at *3. These are the very “aspects of the case on appeal” which Plaintiff now attempts to amend. *Id.*; *See* proposed Am. Compl. at 2, ¶¶ 4-5; 5-6, ¶¶ 24-33; 22, ¶ 147; 23, ¶ 150; 24, ¶ 156(e); 28-29, ¶¶ 173-174; 29-30, ¶¶ 180-186; 33, ¶ 205; 34, ¶¶ 210-212, which are the new allegations in the proposed Amended Complaint. All proposed amended allegations directly pertain to Defendant Jewell and her qualified immunity.

The events in this case occurred more than three years ago, during the 2020-2021 school year. Proposed Am. Compl. at 1, ¶ 1. Further, this case was filed almost a year ago, on August 3,

2023. ECF No. 1. Plaintiff also received Defendant Jewell's Motion to Dismiss almost a year ago, on August 30, 2023, and has been on notice of Defendant Jewell's arguments and the deficiencies in Plaintiff's case since that time. ECF No. 16. Additionally, Plaintiff cited in both their original Complaint and their proposed Amended Complaint to the proceedings of Nicholas Crenshaw's criminal prosecution, representing they have intimate knowledge of the testimony and evidence in that matter. ECF No. 1 at 2, ¶ 2; Proposed Am. Compl. at 2, ¶ 2. However, Plaintiff now attempts to amend their complaint to include nothing more than hearsay of supposed third parties, which they claim they only became aware of more than three years after the fact, and despite their familiarity with Crenshaw's criminal trial. *See* proposed Am. Compl. at 2, ¶¶ 4-5; 5-6, ¶¶ 24-33; 22, ¶ 147; 23, ¶ 150; 24, ¶ 156(e); 28-29, ¶¶ 173-174; 29-30, ¶¶ 180-186; 33, ¶ 205; 34, ¶¶ 210-212. This matter is stayed as to Defendant Jewell, and the Court should not allow Plaintiff to amend their complaint as to Defendant Jewell and relevant to her qualified immunity pending her appeal.

PRAYER

Defendant Jewell prays that the Court deny Plaintiff's motion for leave to the extent additional allegations and claims are made against Defendant Jewell. In the alternative, should the Court allow Plaintiff to amend as proposed, Defendant Jewell requests the Court include in its order that Defendant Jewell's deadline to file responsive pleadings to the amended complaint are stayed pending the outcome of her appeal.

Respectfully submitted,

By: /s/ Andrea L. Mooney

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2024, I electronically filed the foregoing document with the Clerk of the Court through the ECF system and an email notice of the electronic filing was sent to all attorneys of record.

/s/ Andea L. Mooney _____
Andrea L. Mooney