UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STACI BARBER, Plaintiff, vs. KATY INDEPENDENT SCHOOL DISTRICT; BRYAN SCOTT ROUNDS, Principal of Cardiff Junior High, sued in his individual and official capacities, Defendants.	)	CIVIL ACTION No.: 4:24-CV-01004

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO STAY

Plaintiff Staci Barber opposes Defendants' Motion to Stay. Doc. #38.[1] One of the Defendants, Principal Scott Rounds, has appealed this Court's denial of his request for qualified immunity. The claims against the other Defendant, Katy Independent School District (the "District"), remain within this Court's jurisdiction, are pending in full, and are ripe for the Court's consideration as discovery has closed. As on-point case law reflects, delaying the case against the District because of a separate appeal of a different Defendant's defense of qualified immunity would be a needless delay, as the claims against the District are in no way contingent or legally dependent upon that appeal.

ARGUMENT

This Court retains jurisdiction over the issues in this case that have not been appealed. "[W]here an appeal is allowed from an interlocutory order, the district court may still proceed with

[1] There is substantial overlap between the issues raised in the Motion to Certify and the Motion to Stay. Accordingly, Plaintiff incorporates her response to the Motion to Certify herein by reference.

matters not involved in the appeal." *Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981). Defendants bear a heavy burden in asking this Court to stay the exercise of its jurisdiction. As the Fifth Circuit has noted elsewhere, "[a] stay pending appeal is extraordinary relief for which [the movant] bear[s] a heavy burden." *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 372 (5th Cir. 2023) (internal quotations omitted). This is because "[a] stay is an intrusion into the ordinary processes of administration and judicial review[.]" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotations omitted). Here, the extraordinary relief of a stay is unnecessary.

As has been discussed in past briefing on this matter, there is a fundamental difference between Barber's claims against Principal Rounds in his individual capacity and her claims against the District. The chief legal question as to the claims against Principal Rounds in his individual capacity is qualified immunity, where the *Monell* defense is unavailable to him. *See McGrew v. Walker*, 1995 U.S. App. LEXIS 43528, *7 (5th Cir. Mar. 23, 1995) ("Judge Belew's determination that McGrew was required to allege that the defendant officers were executing a custom or policy of the department to state an excessive-force claim against the officers in their individual capacities was incorrect. The 'custom or policy' element need not be alleged to state a claim against an individual officer . . . ."). The chief legal issue as to the claims against the District is the District's *Monell* policy defense, and qualified immunity is unavailable to the District. "Municipalities do not enjoy qualified immunity." *Williams v. City of Yazoo*, 41 F.4th 416, 421 (5th Cir. 2022); *see Trent v. Wade*, 776 F.3d 368, 388 (5th Cir. 2015) ("It is well established that 'municipalities have no immunity from damages liability flowing from their constitutional violations.'") (quoting *Owen v. City of Independence*, 445 U.S. 622, 657 (1980)); *accord Zarnow v. City of Wichita Falls*, 500 F.3d 401, 406 (5th Cir. 2007). In other words, the claims against the two defendants are necessarily legally distinct; defendants rely on one defense or the other but cannot invoke both.

While Principal Rounds' appeal certainly divests this Court of jurisdiction over the specific matter pending on appeal, it does not create a complete divestiture of the Court's jurisdiction over the case. "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 (5th Cir. 2007). Specifically, since the only issue on appeal at the Fifth Circuit Court of Appeals is the denial of Defendant Rounds' Motion to Dismiss based on qualified immunity, the Court currently retains jurisdiction over Plaintiff's *Monell* claims against Defendant Katy ISD.

There is nothing about the appeal of the qualified immunity issue that suggests that the separate *Monell* question cannot be addressed by this Court or that justifies delay in the consideration of that question. *See Martin v. Dallas Cnty., Tex.*, 822 F.2d 553, 555-56 (5th Cir. 1987) ("The protection of government officials who are entitled to immunity does not ipso facto disable a plaintiff from conducting discovery against all non-immune defendants in his case."). The Fifth Circuit's decision in *Dusek* is directly on point. There, an individual appealed her denial of qualified immunity and sought a stay of claims against her co-defendant, an independent school district. *Dusek*, 492 F.3d at 564. The Fifth Circuit denied the motion to stay. The Court explained that the "district court may compel discovery disclosures related to the plaintiffs' Title IX claims because doing so does not interfere with any aspect of Dusek's appeal." *Id.* at 565. *Dusek* made clear that a stay of separate matters not affected by qualified immunity would be unnecessary and go beyond the scope of the limited appeal of an interlocutory immunity ruling. "Even though the factual basis of the Title IX claims and the § 1983 claim overlap, the claims are legally distinct." *Id.* Essentially, the appellant did not want to answer interrogatories or produce certain documents related to a separate claim that was asserted against her co-defendant. *Id.* at 563. As such, she

sought a stay of the entire case. *Id.* The Fifth Circuit reasoned, "[a]lthough qualified immunity is an entitlement to be free from the burdens of time-consuming pre-trial matters and the trial process itself, it is a right to immunity from certain claims, not from litigation in general." *Id.* at 565 (quoting *Williams v. Brooks*, 996 F.2d 728, 730 n.2 (5th Cir. 1993); *Behrens v. Pelletier*, 516 U.S. 299, 312 (1996)) (internal quotations omitted).

When a defendant raises qualified immunity with respect to some claims, the case "may proceed on those [other] claims that are legally distinct and for which a party may not assert the defense." *Harris v. City of Balch Springs*, 33 F. Supp. 3d 730, 733 (N.D. Tex. 2014) (citing *Dusek*, 492 F.3d at 565). This crucial distinction remains true even if the claims' factual bases overlap. *Dusek*, 492 F.3d at 565. As this Court has likewise noted, "[t]o the extent that a defendant is subject to discovery for claims for which he cannot assert qualified immunity, an interlocutory appeal on qualified immunity does not impact such discovery requests." *Howard v. City of Houston*, 2022 U.S. Dist. LEXIS 71400, *6 (S.D. Tex. April 18, 2022).

Howard is another highly illustrative decision. A lawsuit was brought against police officers and the City of Houston, and this Court denied qualified immunity as raised in a motion to dismiss. *Howard*, 2022 U.S. Dist. LEXIS 71400, *2. The officer who was denied qualified immunity filed an interlocutory appeal and then, as here, the municipal defendants filed a motion to stay. *Id.* This Court denied the motion.

> The City Defendants' second argument is that since both sets of claims involve the same facts, then Acevedo's appeal necessarily impacts the claims against the City, and the court should stay the case pending that appeal. . . . This argument fails because the City is a municipality and does not enjoy qualified immunity.

Id. at *4-5. The Court's analysis is directly applicable here: "the limited scope of the appeal—whether Acevedo is entitled to qualified immunity under the facts alleged in the complaint—has no impact on the claims against the City[.]" *Id.* *5. *Howard* was no outlier. *See, e.g., Harris*, 33 F.

Supp. 3d at 733 (while the city manager pursued an interlocutory appeal of the denial of qualified immunity, the district court permitted discovery to proceed for the claims against the City of Balch Springs—including discovery requests of the city manager*)*; *Rhodes v. Prince*, 2008 U.S. Dist. LEXIS 77805 (N.D. Tex. Oct. 3, 2008) (allowing discovery during an interlocutory appeal of that court's grant of qualified immunity where the case against a city remained).

The case relied upon by Defendants, *Gaalla v. Citizens Med. Ctr.*, 2011 U.S. Dist. LEXIS 386, *5 (S.D. Tex. Jan. 4, 2011), is not to the contrary. As Defendants noted, this Court's decision in *Gaalla* was based on "the close relationship between the claims against CMC and the other Defendants." *Id.* That close relationship simply does not exist here. *Gaalla* contains no discussion of *Monell*, which legally distinguishes the case against Rounds from the case against the District. Yes, Barber asserts 42 U.S.C. § 1983 claims for violations of the First and Fourteenth Amendments against the District and Rounds. But those claims are radically different. The District's *Monell* liability (now presented to this court for summary judgment) is a question different in kind and different in factual predicate from the question of Rounds' qualified immunity. The legal question as to qualified immunity is what Rounds ordered Barber to do and whether his statement to her violated her clearly established rights. The legal question for the District's liability is whether its obligations for the religious conduct of its employees in its employee handbook constitutes a policy or practice. The same material underlying facts are not at issue for those two distinct actions; qualified immunity hinges on what Rounds said to Barber about what she could do, while *Monell* hinges on the nature of the District action in its employee handbook. These are different factual questions that present different questions of proof to this or an appellate court.

Moreover, to the extent there is an overlap, that "overlap actually supports denying a stay in the instant case. . . . To the extent that a defendant is subject to discovery for claims for which

he cannot assert qualified immunity, an interlocutory appeal on qualified immunity does not impact such discovery requests." *Howard*, 2022 U.S. Dist. LEXIS 71400, *5-6 (emphasis in original). Fundamentally, the two cases pose materially different issues, hinging on different facts. Accordingly, a stay in this Court of issues that are not dependent or contingent upon the appeal of qualified immunity is simply unnecessary. This is particularly highlighted by the fact that Defendant Rounds' appeal is at the Motion to Dismiss stage. His appeal at the Fifth Circuit will only consider the allegations in the complaint; this Court's consideration of the actual underlying facts while addressing a separate legal issue and separate defendant is simply unrelated.

The District cannot assert qualified immunity, and ongoing consideration of the claims against the District would not impede any right to qualified immunity or otherwise interfere with any aspect of Principal Rounds's appeal. Plaintiff has filed a Partial Motion for Summary Judgment that remains very much alive as to Katy ISD and therefore ripe for this Court's consideration. Rather than delaying consideration of the issues presented in that motion as to the District, this Court can and should address the Partial Motion for Summary Judgment pursuant to its current schedule. Regardless of the outcome of Defendant Rounds' appeal, the case will still have to go forward against Katy ISD. Even if Rounds prevails on appeal, that will not foreclose Plaintiff's claims against the District. The claims against Rounds and the District are legally separate and distinct. Delaying the claims against the District while Rounds's appeal makes its way through the Fifth Circuit is simply unnecessary.

CONCLUSION

For these reasons, Plaintiff Staci Barber respectfully requests that the Court deny Defendants' Motion to Stay and proceed to address Plaintiff's Partial Motion for Summary Judgment.

Dated: April 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby affirm that a true and correct copy of the foregoing document was served upon all counsel of record through the Court's e-filing system on April 29, 2025.

/s/ Nathan J. Moelker
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