IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-1458

Christine Sturgis,

Respondent,

v.

Berkeley County School District, Amy Fuller (In Her Individual Capacity), Ashley Grech (In Her Individual Capacity), Carol Bartlett (In Her Individual Capacity), and Katie Stapleton (In Her Individual Capacity),

Defendants,

Of whom Amy Fuller (In Her Individual Capacity), Ashley Grech (In Her Individual Capacity), Carol Bartlett (In Her Individual Capacity), and Katie Stapleton (In Her Individual Capacity) are Appellants.

MEMORANDUM ADDRESSING RIPENESS OF APPEAL

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STATEMENT OF THE CASE

Respondent Christine Sturgis ("Sturgis") filed suit against the Berkeley County School District ("BCSD") and against Appellants Amy Fuller, Ashley Grech, Carol Bartlett, and Katie Stapleton (collectively, "Appellants") on June 20, 2014, and subsequently filed an Amended Complaint on September 24, 2014. In addition to the claims alleged against the BCSD, Sturgis asserted a single claim for civil conspiracy against Appellants.

On November 7, 2014, Appellants filed a Motion pursuant to Rule 12(b)(6), SCRCP, asserting that they were immune from *suit* pursuant to Proviso § 117.92 of the 2014-2015 General Appropriations Bill because Sturgis does not allege in her Amended Complaint that they acted outside the scope of their official duties.[1] *2014-2015 Appropriation Act*, H.4701, Part 1B, § 117.92 (enacted July 1, 2014). Appellants' Motion to Dismiss was denied by Order dated January 13, 2015, and their Motion to Alter/Amend was denied by Order dated March 2, 2015 (collectively, the "Orders"). Appellants filed a Notice of Appeal on March 18, 2015, and on April 2, 2015, counsel for Appellants received a letter from the Court of Appeals requesting Appellants address whether their appeal is ripe for review.

In response, Appellants submit this memorandum. Appellants' appeal is ripe for review because it involves Appellants' substantial right to immunity from suit.

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[1] The *2013-2014 Appropriations Act*, H.3710, Part 1B, § 117.95 (enacted August 1, 2013) provides identical immunity to Appellants. Regardless whether the Proviso contained in the 2013-2014 *Appropriations Act* or the 2014-2015 *Appropriations Act* is applicable, the immunity provided to Appellants is continuous and identical.

ARGUMENT

I. THE CIRCUIT COURT'S ORDERS DEPRIVE APPELLANTS OF THEIR GUARANTEED RIGHT TO IMMUNITY FROM SUIT, A SUBSTANTIAL RIGHT, PURSUANT TO PROVISO § 117.92 AND, THEREFORE, ARE IMMEDIATELY APPEALABLE

In passing the 2014-2015 Appropriations Act (and the 2013-2014 Appropriations Act), the General Assembly included a proviso that protects government employees acting within the scope of their official duty from civil conspiracy claims. Specifically, the Proviso states that when a government employee "is personally sued for civil conspiracy based in part upon a personnel or employment action or decision regarding an employee, the court must, prior to trial, make a final determination whether the action or decision giving rise to the suit was made by the government employee within the scope of their official duty. . . [and] [i]f the court finds the government employee was acting within the scope of their official duties, the employee is **immune from suit**, liability, and damages with respect to the civil conspiracy claim." *2014-2015 Appropriations Act*, H.4701, Part 1B, § 117.92 (enacted July 1, 2014)(emphasis added).[2] Because the Proviso provides Appellants with complete immunity from suit, as opposed to mere immunity from liability and damages, the Circuit Court's Orders denying Appellants' Motion to Dismiss affect a substantial right and, therefore, are immediately appealable.

"It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." Brown v. County of Berkeley, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005)(internal citations omitted). "To affect a

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[2] *See also 2013-2014 Appropriation Act*, H.3710, Part 1B, § 117.92 (enacted August 1, 2014) providing identical immunity to Appellants.

substantial right, the order must 'determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.'" Id., *citing* Woodard v. Westvaco Corp., 319 S.C. 240, 243, 460 S.E.2d 392, 394 (1995). The Circuit Court's Orders affect a substantial right because the Circuit Court's Orders force Appellants to submit to suit in direct contradiction to the plain language of the Proviso.[3] If forced to submit to suit (i.e., written discovery, depositions, etc.), Appellants' rights cannot be remedied upon appeal from a final judgment because each would already have been forced to submit to the demands of Sturgis' lawsuit.

Black's Law Dictionary defines suit as "[a]ny proceeding by a party or parties against another in a court of law." Black's Law Dictionary (10th ed. 2014). Furthermore, "[i]n the legal sense, suit refers to an ongoing dispute at any stage, from the initial filing to the ultimate resolution." Id. While South Carolina's courts have not specifically addressed the Proviso, other jurisdictions considering immunity from suit have concluded that orders denying individuals immunity from suit are immediately appealable because an immediate

[3] Sturgis' Amended Complaint makes no allegation that the Appellants were acting outside the scope of their official duties.

appeal is the only avenue to protect the rights guaranteed by the immunity from suit.[4]

"The rationale behind allowing immediate review of an order denying dismissal based on governmental immunity is that government officials entitled to immunity should not be forced to endure the expense and delay of proceeding to trial." McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830, 832 (Minn. 1995), *citing* Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). Succinctly stated, Appellants' "immunity 'is effectively lost if a case is erroneously permitted to go to trial.'" Id.

An Arizona appellate court similarly found that a defendant, in a state court action involving a claim made by way of 42 U.S.C. § 1983, was allowed to immediately appeal the trial court's order denying a motion to dismiss. Henke v. Superior Court of State of Ariz., 161 Ariz. 96, 99, 775 P.2d 1160, 1163 (Ariz. Ct. App. 1989)("Based on the right involved here, there is no way short of interlocutory review to review the trial court's alleged error before the primary benefit of Henke's qualified immunity is lost"). In allowing the immediate

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[4] In many respects, the Proviso is similar to the issue of qualified immunity. Orders denying Rule 12 motions based upon qualified immunity are immediately appealable. Occupy Columbia v. Haley, 738 F.3d 107, 115 (4th Cir. 2013) *citing* Ridpath v. Bd. of Governors Marshall Univ., 447 F.3d 292, 305 (4th Cir.2006)("A district court's denial of qualified immunity, however, 'is immediately appealable under the collateral order doctrine to the extent that the availability of this defense turns on a question of law.'"). "'This principle applies whether qualified immunity was rejected at the dismissal stage (as in these proceedings), or at the summary judgment stage.'" Id. "If the plaintiff is unable to allege a violation of clearly established law, the defendants who claim qualified immunity **are entitled to dismissal before commencement of discovery**, because this immunity protects government officials not only from liability but also from trial." O'Bar v. Pinion, 953 F.2d 74, 85 (4th Cir.1991)(emphasis added) *citing* Turner v. Dammon, 848 F.2d 440, 444 (4th Cir.1988); H.H. ex rel. H.F. v. Moffett, 335 Fed.Appx. 306, 311 - 312 (4th Cir. 2009) *citing* Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)("'Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal *before the commencement of discovery.*'")(emphasis in original).

appeal, the Arizona Court of Appeals noted that when the immunity asserted is *immunity from suit*, the issue should be resolved "at the earliest possible stage to shield officers from the disruptive effects of broad-ranging discovery and effects of litigation." Id., 161 Ariz. at 100, 775 P.2d at 1164, *citing* Anderson v. Creighton, 483 U.S. 635 (1987).

The Arizona Court of Appeals further reasoned that "[b]ecause the benefit of qualified immunity is immunity from suit rather than a mere defense to liability, it is effectively lost if the case is erroneously permitted to go to trial" and, therefore, "[the] denial of a motion to dismiss based on qualified immunity is effectively unreviewable on appeal from a final judgment." Id., 161 Ariz. at 99, 775 P.2d at 1163. Similarly, if Appellants are required to endure, for instance, discovery, the immunity from suit provided to them by the Proviso is effectively unreviewable and lost.

In South Carolina, perhaps the best corollary is judicial immunity, that similarly provides absolute immunity from suit. O'Laughlin v. Windham, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (Ct. App. 1998)("Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances."). Similarly, and specifically because Sturgis failed to allege in her Amended Complaint that Appellants acted outside the scope of their official duties, Appellants are immune from suit and the Proviso acts as an absolute bar to suit against them. However, the absolute bar to suit is effectively lost if Appellants are denied the opportunity to immediately appeal the Circuit Court's Orders and required to endure the rigors of litigation against them.

The Circuit Court's Orders affect Appellants' substantial right to immunity from suit. On this basis, the Court of Appeals should allow Appellants to proceed with their appeal.

CONCLUSION

If the Appellants are denied the right to immediately appeal the Circuit Court's Orders denying their Motion to Dismiss, the immunity from suit guaranteed them by the Proviso and the General Assembly is lost. Therefore, the Court of Appeals should allow the Appellants to proceed with their immediate appeal because it involves a substantial right to be immune from suit.

(Signatures on Following Page)

Respectfully submitted,

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PROOF OF SERVICE OF MEMORANDUM ADDRESSING RIPENESS OF APPEAL

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I hereby certify that on April 8, 2015 I served a copy of the Memorandum Addressing Ripeness of Appeal on the following:

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by placing a copy of said document in the United States mail with sufficient postage thereon.

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April 8, 2015

Via Federal Express
The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
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Re: *Christine Sturgis v. Berkeley County School District, et. al.*,
Civil Action No.: 2014-CP-08-1458

Dear Ms. Kitchings:

Enclosed for filing is Appellants' Memorandum Addressing Ripeness of Appeal. Also enclosed is the Proof of Service of Appellants' Memorandum Addressing Ripeness of Appeal on the respondent.

Yours truly,

CLEVELAND & CONLEY, LLC

Joshua D. Cagle

JDC/jgb
Enclosures: as stated
cc: Donald Gist, Esquire