

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40305
Summary Calendar

CHARLES MELVIN JACKSON, JR.,

Plaintiff-Appellee,

versus

JOSEPH MITCHELL, Etc.; ET AL.,

Defendants,

JOSEPH MITCHELL, Dentist,
Coffield Unit,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:01-CV-159

December 10, 2002

Before BARKSDALE, DEMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Dr. Joseph Mitchell appeals the district court's denial of summary judgment based on qualified immunity. An order denying qualified immunity is immediately appealable if based on conclusions of law rather than the presence of a genuine issue of material fact. See Palmer v. Johnson, 193 F.3d 346, 350 (5th Cir. 1999). However, "if the district court concludes that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

summary judgment record raises a genuine issue of material fact with respect to whether the defense of qualified immunity is applicable, then that decision is not immediately appealable.” Id. at 351.

We conclude, as did the magistrate judge, that there are genuine issues of material fact as to the existence of a serious dental need that preclude the grant of summary judgment on the basis of qualified immunity. Consequently, this court does not have jurisdiction over Dr. Mitchell’s interlocutory appeal. See Palmer, 193 F.3d at 351.

We decline to exercise our pendent appellate jurisdiction over the magistrate judge’s denial of Dr. Mitchell’s statute-of-limitations defense because it is not “inextricably intertwined” with the denial of qualified immunity. See Thornton v. General Motors Corp., 136 F.3d 450, 454 (5th Cir. 1998).

APPEAL DISMISSED.