

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 95-10945

RUSSELL THOMAS JOHNSON,

Plaintiff-Appellee,

VERSUS

DAVID WILLIAMS, ET AL.,

Defendant-Appellant,

Appeal from the United States District Court
For the Northern District of Texas
(4:93-CV-632-Y)

July 15, 1996

Before DAVIS and DENNIS, Circuit Judges, and FALLON, District Judge.¹

PER CURIAM:²

Defendants, David Williams, J.A. Smedley, and Hank Pope appeal the district court's order dismissing their motion for summary judgment. We dismiss the appeal for lack of appellate jurisdiction.

This court can exercise jurisdiction over interlocutory appeals only where the order appealed from (1) "conclusively determine[s] the disputed question" and (2) "involve[s] a claim of right separable from, and collateral to, rights asserted in the action." Mitchell v. Forsyth, 472 U.S. 511, 527 (1985). The district court in this case dismissed defendants'

¹ District Judge of the Eastern District of Louisiana, sitting by designation.

²Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

motion for summary judgment as moot on the ground that defendants have not yet filed an answer and, therefore, have not yet pled the affirmative defense of qualified immunity. The district court's order does not determine whether the defendants in this § 1983 action are entitled to qualified immunity and does not have the practical effect of requiring defendants to proceed to trial or allowing broad-reaching discovery on the merits of the plaintiff's claim. It merely requires defendants to file an answer in which they plead the affirmative defense of qualified immunity before they move for summary judgment on that ground again. Because the district court's order does not conclusively adjudicate any of the defendants' rights under qualified immunity, we have no jurisdiction to hear this interlocutory appeal. The appeal is

DISMISSED.