

**FILED**

December 22, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 06-41579

---

CHRISTY CARTY, Individually and as Next Friend for Bryce Carty,  
Justice Carty and Maddy Carty, Minors and as Representative of  
the Estate of Jimmy Carty Jr., Deceased,

Plaintiff - Appellees,

v.

ALBERT RODRIGUEZ, Commander; ERWIN BALLARTA, Lieutenant,

Defendants - Appellants.

-----  
Appeal from the United States District Court  
for the Eastern District of Texas, Marshall Division  
-----

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:\*

Defendants Albert Rodriguez and Erwin Ballarta have filed an appeal of the district court's denial of their motion under Rule 12(b)(6) to dismiss the present action on qualified immunity grounds. This appeal has not yet been assigned to a review panel of this Court, but Rodriguez and Ballarta have also filed an emergency motion seeking a stay of the district court's Docket Control Order and Amended Discovery Order during the pendency of their appeal. Our panel has been assigned the sole task of ruling on 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Defendants' motion to stay.

"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. There is no difference in our analysis whether the appeal is from a denial of a motion to dismiss or from a denial of a motion for summary judgment. *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245 (5th Cir. 2005).

Although we recognize the right of a district court to refrain from making a ruling on qualified immunity until factual disputes have been developed through limited discovery, that is not the case before us. Here the district court affirmatively denied the Defendants' motion to dismiss the suit on qualified immunity grounds. Therefore, we must grant the stay of proceedings pending the appeal of qualified immunity. The stay is granted only as to Defendants Rodriguez and Ballarta. We specifically make no determinations as to the merits of the Defendants' appeal.

IT IS ORDERED that the motion of Defendants Albert Rodriguez and Erwin Ballarta to stay the district court's Docket Control Order filed October 11, 2006 and the Amended Discovery Order filed October 19, 2006 is GRANTED insofar as the Docket Control Order and Amended Discovery Order apply to those Defendants.

