

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-15815
Non-Argument Calendar

D.C. Docket No. 1:11-cv-02799-TWT

SANDRA GRAY,

Plaintiff - Appellee,

versus

THE CITY OF ROSWELL, et al.,

Defendants,

PATRICK C. FERDARKO,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(May 7, 2014)

Before HULL, MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Patrick C. Ferdarko, a City of Roswell, Georgia police officer, appeals from the district court's denial of qualified immunity on summary judgment. Plaintiff, Sandra Gray, moves to dismiss the appeal for lack of jurisdiction. Gray's claim arises from her arrest for criminal damage to the property of Gregory Pompelia, her tenant, during her attempt to remove him from her home without seeking a writ of dispossession.

The district court's summary judgment order denying qualified immunity to Ferdarko is immediately appealable as a collateral order because Ferdarko's challenge is based in part on a question of law. In his brief, Ferdarko challenges the district court's legal analysis of Georgia criminal trespass statutes, O.C.G.A. § 16-7-21 and § 16-7-23, to consider whether those statutes provide arguable probable cause to arrest Gray, and whether the district court used an improper standard to determine whether the law clearly proscribed the conduct complained of. Thus, Ferdarko's appeal presents questions of law which are properly before this Court on interlocutory review. *See Cottrell v. Caldwell*, 85 F.3d 1480, 1485 (11th Cir. 1996). To the extent that the appeal also implicates the district court's factual determinations, we may review and resolve such issues in connection with

the immunity question. *Id.* at 1485–86. Therefore, we DENY the motion to dismiss the appeal for lack of jurisdiction.

On review, we agree with the district court that the evidence Gray presents in support of her false arrest claim, when viewed in the light most favorable to her, suggests that there was no basis for believing that she committed a crime and that there was no probable cause, arguable or otherwise, to support her arrest. Therefore, the district court’s denial of summary judgment as to Ferdarko’s affirmative defense of qualified immunity was not in error.

MOTION TO DISMISS DENIED. AFFIRMED and REMANDED for further proceedings.