

United States Court of Appeals
For the Eighth Circuit

No. 12-2008

J.S., K.S., C.S., and J.S., Minors
via Guardian and Parent Scott Selmer

Plaintiffs - Appellants

v.

Saint Paul Academy and Summit
School, Bryn Roberts, Timothy Rodd,
Charles Zelle, Jill Romans, Cynthia
Richter, Timothy Elchert, Anne Fiedler,
Judy Johnson, Michael Thomford, and
Thomas Hobert

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: January 29, 2013
Filed: February 12, 2013
[Unpublished]

Before MURPHY, SMITH, and COLLOTON, Circuit Judges.

PER CURIAM.

Scott Selmer, on behalf of his four children (plaintiffs), purports to appeal the district court's dismissal of their civil complaint. Plaintiffs' July 2011 amended complaint named St. Paul Academy and Summit School (SPA), several individuals who were SPA employees or trustees (the SPA defendants), as well as Paul Applebaum, a parent of two children at SPA. The SPA defendants moved to dismiss; Applebaum was not a party to the motion. Applebaum neither answered nor filed any motion. The district court granted the SPA defendants' motion to dismiss.

As the district court did not address plaintiffs' claims against Applebaum, those claims remain pending, and this appeal is premature. See Bullock v. Baptist Mem'l Hosp., 817 F.2d 58, 59 (8th Cir. 1987) (order dismissing complaint as to fewer than all defendants is not "final order"); Ruffolo v. Oppenheimer & Co., Inc., 949 F.2d 33, 34-36 (2d Cir. 1991) (order granting one defendant's motion to dismiss was not final appealable decision where other defendant neither answered nor moved to dismiss); see also Huggins v. FedEx Ground Package Sys., Inc., 566 F.3d 771, 773 (8th Cir. 2009) (where it appears jurisdiction is lacking, appellate courts are obligated to consider sua sponte jurisdictional issues). Accordingly, we dismiss this appeal and remand to the district court for consideration of plaintiffs' claims against Applebaum.
