

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

SCOTT BRADEN, as parent and next friend of M

PLAINTIFF

v.

Case No. 3:10-CV-03118

MOUNTAIN HOME SCHOOL DISTRICT;
CHARLES SCRIBER; DEBBIE ATKINSON;
MICHELLE MCWILLIAMS; LINDA WHITE; and
CASSIE FOWLER

DEFENDANTS

NOTICE

The Court hereby gives notice, pursuant to Federal Rule of Civil Procedure 62.1(a)(3), of its intent to grant Plaintiff's Motion to Dismiss Defendants Scriber, Atkinson, McWilliams, White, and Fowler (Doc. 75). Previously, on October 18, 2012, the Court entered an order denying qualified immunity to these individual Defendants for Plaintiff's claims arising under 42 U.S.C. § 1983. Defendants filed an interlocutory appeal of the Court's decision on qualified immunity, which is now pending before the Court of Appeals for the Eighth Circuit. Because the matter of the individual Defendants' entitlement to qualified immunity is now being appealed, this Court lacks the authority to grant Plaintiff's Motion to Dismiss at this time, even though doing so would render moot the basis for Defendants' appeal. Plaintiff's Brief in Support of its Motion to Dismiss affirmatively states that Plaintiff "seeks to dismiss his remaining 1983 claims against all personally named Defendants . . . with prejudice . . . [which] will indeed bring them the relief sought in their Interlocutory Appeal . . ." (Doc. 76, p. 3).

The Court has made no final determinations regarding the liability of the other named Defendant in this action, Mountain Home School District, that are appealable at this time. As

granting Plaintiff's pending Motion to Dismiss would remove all Defendants from this action except Defendant Mountain Home School District, the Court finds that this Notice raises a substantial issue for the Court of Appeals to consider, and pursuant to Federal Rule of Civil Procedure 62.1(b) and Federal Rule of Appellate Procedure 12.1(a), Plaintiff is directed to promptly notify the circuit clerk as to the filing of this Notice.

IT IS SO ORDERED this 26th day of March, 2013.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U. S. DISTRICT JUDGE