

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORALEE ANDERSON-FRANCOIS,

Plaintiff,

No. C 08-00724 WHA

v.

COUNTY OF SONOMA, CITY OF SANTA
ROSA, JERRY NEWMAN, BRAD CONNORS,
OFFICER HOOD, JOHN FELMAN, and DOES
1–25, inclusive,

**ORDER STAYING CASE
PENDING APPEAL AND
VACATING TRIAL DATES**

Defendants.

Plaintiff Oralee Anderson-Francois, a foster parent, sues the County of Sonoma, the City of Santa Rosa and various county and city employees for civil-rights violations pertaining to the removal two foster children from her custody. A May 2009 order denied summary-judgment motions filed by both sides. It ruled, *inter alia*, that neither collateral estoppel nor the Rooker-Feldman doctrine applied, that material factual disputes precluded summary judgment on plaintiff's constitutional claims, and that defendants were not entitled to qualified immunity. Defendants have filed an interlocutory appeal of the immunity ruling, and they ask that the case be stayed pending appeal and the pretrial conference and trial dates be vacated.

A district court's order denying a claim of qualified immunity is immediately appealable in appropriate circumstances including where, as here, genuine issues of material fact remain and the immunity ruling hinged on whether a reasonable officer would have been aware that he was violating the plaintiff's constitutional rights. *Gausvik v. Perez*, 345 F.3d

1 813, 816 (9th Cir. 2003). With limited exceptions, such appeal divests the district court of
2 jurisdiction and stays the proceedings in the district court:


3 Should the district court find that the defendants' claim of
4 qualified immunity is frivolous or has been waived, the district
5 court may certify, in writing, that defendants have forfeited their
6 right to pretrial appeal, and may proceed with trial. In the
7 absence of such certification, the district court is automatically
8 divested of jurisdiction to proceed with trial pending appeal.

9 *Chuman v. Wright*, 960 F.2d 104 (9th Cir. 1992).

10 Here, defendants immunity claim was not frivolous. Therefore, this case is **STAYED**
11 pending the appeal. The pretrial conference and trial date scheduled for July 2009 and
12 September 2009, respectively, are hereby **VACATED**. A case management conference will be
13 held **October 22, 2009, at 11:00 a.m.** Counsel shall file a joint status report at least seven
14 days prior to the hearing.

15 **IT IS SO ORDERED.**

16 Dated: July 7, 2009.

17 
18 _____
19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28