

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 06-cv-02272-REB-MJW

P. CHRISTOPHER SWANSON,
GERALDINE SCHMIDT, and
JOANNE ROE, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

THE TOWN OF MOUNTAIN VIEW, COLORADO,
POLICE CHIEF ERIC GOMEZ, in his individual and official capacity,
POLICE OFFICER DAVID GROFF, in his individual and official capacity,
POLICE OFFICER HERNANDEZ, in his individual and official capacity, and
POLICE OFFICER PEREZ, in his individual and official capacity,

Defendants.

ORDER DENYING MOTION TO CERTIFY APPEAL AS FRIVOLOUS

Blackburn, J.

This matter is before me on the **Plaintiffs' Motion To Certify Defendants' Appeal as Frivolous and/or Dilatory** [#89]¹ filed April 15, 2008. The defendants filed a response [#91] and the plaintiffs filed a reply [#93]. I deny the motion.

On March 20, 2008, I entered an order [#77] addressing the defendants' motion for summary judgment. In that order I denied the claim of defendants Gomez, Groff, Hernandez, and Perez that they are shielded from the plaintiffs' claims by qualified immunity. As permitted by law, the defendants have filed a notice of appeal to challenge my denial of Gomez, Groff, Hernandez, and Perez's claim of qualified

¹ "[#89]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

immunity. That appeal is pending, and this case is stayed pending resolution of the appeal.

In their present motion, the plaintiffs ask that I certify the defendants' appeal as frivolous and/or dilatory. If I so certify the appeal, then I may retain jurisdiction pending disposition of the appeal, arguably minimizing disruption of the proceedings on this case in this court. ***Behrens v. Pelletier***, 516 U.S. 299, 310 - 311 (1996); ***Stewart v. Donges***, 915 F.2d 572, 577 (10th Cir. 1990). Having reviewed the parties arguments, I conclude that the defendants' appeal of my qualified immunity determination is not so baseless that it is frivolous and dilatory. Thus, I deny the plaintiffs' motion.

THEREFORE, IT IS ORDERED that the **Plaintiffs' Motion To Certify Defendants' Appeal as Frivolous and/or Dilatory** [#89] filed April 15, 2008, is **DENIED**.

Dated March 13, 2009, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge