

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANITA ANDREWS,

Plaintiff,

v.

Case No: 2:16-cv-814-FtM-99MRM

MIKE SCOTT, DEPUTY BRANDON
MARSHALL, SERGEANT ROBERT
KIZZIRE, DEPUTIES JOHN AND
MARY DOES, JANE AND JOHN
DOES and CORIZON HEALTH,
INC.,

Defendants.

ORDER¹

This matter comes before the Court on Defendants Deputy Brandon Marshall and Sergeant Robert Kizzire's Motion to Stay Proceedings Pending Appeal ([Doc. 60](#)) filed on October 3, 2017, which was joined by Defendant Corizon Health ([Doc. 65](#)). Plaintiff has not filed a response and the time to do so has expired.

Defendants filed a Notice of Appeal ([Doc. 57](#)) on September 29, 2017 from the Court's Opinion and Order ([Doc. 53](#)) denying Deputy Marshall and Sergeant Kizzire's Motion to Dismiss based on qualified immunity. Judgment was not entered and the case otherwise remains pending.

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

The Eleventh Circuit Court of Appeals has jurisdiction over appeals from certain interlocutory orders that do not require certification from the District Court. [28 U.S.C. § 1292\(a\)](#). An order denying qualified immunity is immediately appealable even though it is interlocutory. See *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985). Deputy Marshall and Sergeant Kizzire seek a stay of *all* proceedings pending resolution of the interlocutory appeal, arguing that the claims in this case are intertwined and involve the same allegations of similar issues of law. Indeed, Plaintiff's derivative claims against Sheriff Mike Scott necessarily fail if the officers acted within constitutional bounds.

Seeing no opposition from Plaintiff and otherwise reviewing the arguments of counsel, the Court agrees that proceeding with this case and engaging in discovery against Sheriff Scott and Corizon Health, Inc. will only result in piecemeal litigation and a waste of judicial resources. Therefore, the Court will stay the case pending the outcome of the interlocutory appeal. The Court will deny Defendants' Motion to Enter Judgment for Costs ([Doc. 46](#)) without prejudice, which may be refiled once the stay has been lifted.

Accordingly, it is now

ORDERED:

1. Defendants Deputy Brandon Marshall and Sergeant Robert Kizzire's Motion to Stay Proceedings Pending Appeal ([Doc. 60](#)) is **GRANTED**. All proceedings in this case are stayed pending the outcome of the interlocutory appeal ([Doc. 57](#)).
2. The Clerk is directed to add a stay flag to this case.
3. Defendants' Motion to Enter Judgment for Costs ([Doc. 46](#)) is **denied without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida this 18th day of October, 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record