

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:15-CV-110-FL

EMMA VICTORIA JOHNSON HOWARD,)	
)	
Plaintiff,)	
)	
v.)	
)	
W. B. LILLEY, in his personal capacity and)	ORDER
RAYMOND EARL DICKERSON,)	
)	
Defendants.)	

This matter comes before the court on plaintiff’s motion for stay pending appeal (DE 19). Plaintiff commenced this action on March 20, 2015, asserting claims against several defendants under 42 U.S.C. §1983 arising out of the alleged deprivation of her property. Upon frivolity review, on August 28, 2015, the court dismissed plaintiff’s claim in part for failure to state a claim. Specifically, the court dismissed claims against Vance County Sheriff’s Department, Vance County District Court, and defendant W.B. Lilley in his official capacity, but allowed plaintiff’s claims against defendant W.B. Lilley in his individual capacity and defendant Raymond Earl Dickerson to remain.

The court then directed the plaintiff to present summonses to the clerk directed to the two defendants remaining in the case. On September 17, 2015, plaintiff filed a “Response to Order,” in which plaintiff again asserted the terminated claims and requested service against the terminated defendants. She presented proposed summonses as to all defendants, including those terminated,

and those to individual defendants remaining. On September 18, 2015, plaintiff filed a notice of interlocutory appeal as to the court's August 28, 2015, order.

On September 23, 2015, the magistrate judge ordered the U.S. Marshal to make service on behalf of plaintiff to the two non-terminated defendants, W.B. Lilley and Raymond Earl Dickerson. Return of service as to Raymond Earl Dickerson was filed on October 9, 2015. Because the court has terminated plaintiff's claims against defendants Vance County Sheriff's Department, Vance County District Court, and defendant W.B. Lilley in his official capacity, and because the U.S. Marshal has been ordered to serve summons to the remaining defendants, plaintiff's argument to direct summonses to the terminated defendants is without merit. Moreover, plaintiff's notice of interlocutory appeal does not deprive the court of jurisdiction. See 28 U.S.C. § 1292(b) ("application for an [interlocutory] appeal . . . shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.").

Accordingly, there is no basis for a stay pending plaintiff's interlocutory appeal, and this matter shall proceed against defendants W.B. Lilley and Raymond Earl Dickerson.

SO ORDERED, this the 14th day of October, 2015.



LOUISE W. FLANAGAN
United States District Court Judge