

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HADIYA ABDULSALAAM, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 06-CV-413
	:	
FRANKLIN COUNTY BOARD OF COMMISSIONERS, et al.,	:	JUDGE ALGENON L. MARBLEY
	:	
Defendants.	:	Magistrate Judge Abel
	:	

ORDER GRANTING FINALITY CERTIFICATION

This matter is before the Court on the Parties Joint Motion for Certificate of Appealability On All Claims Against Defendants FCCS, Saros, and Allensworth. (Doc. No. 73.) On July 23, 2009, the Court granted summary judgment to Defendants FCCS Board of Trustees, Allensworth, and Saros on all counts and granted in part and denied in part summary judgment in favor of Defendant Spires. Defendant Spires has now appealed the partial denial of summary judgment on qualified immunity grounds. Plaintiffs seek to cross-appeal the Court's grant of summary judgment in favor of the other defendants. In their Joint Motion, the Parties request that the Court enter final judgment on all claims against Defendants FCCS Board of Trustees, Saros, and Allensworth pursuant to Federal Rule of Civil Procedure 54(b) and certify that there is not just reason to delay the appeal of all claims against those Defendants.

Rule 54(b) provides a mechanism through which a district court may release a case for immediate appeal of a final decision involving one or more claims or parties before entry of final

judgment as to all matters in dispute.¹ Fed.R.Civ.P. 54(b); *Corrosioneering, Inc. v. Thyssen Envtl. Sys., Inc.*, 807 F.2d 1279, 1282 (6th Cir. 1986). A Rule 54(b) certification is appropriate where the court has rendered a decision that represents its final judgment with regard to one of the parties or claims and finds that there is no just reason to delay appellate review. *QSI-Fostoria DC, LLC v. Gen. Elec. Capital Bus. Asset Funding Corp.*, No. 3:02CV7466, 2008 WL 163605, at *5-6 (N.D. Ohio Jan. 16, 2008). The Sixth Circuit has articulated the following non-exhaustive list of factors to be considered in ruling on a Rule 54(b) motion:

(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. Depending upon the facts of the particular case, all or some of the above factors may bear upon the propriety of the trial court's discretion in certifying a judgment as final under Rule 54(b).

Corrosioneering, Inc., 807 F.2d at 1283.

Applying those factors supports granting the Parties' Motion. First, the Court finds that the adjudicated claims and the unadjudicated claims involve the same issue of qualified immunity and the same factual record. In deciding the Defendant Spires' appeal, the Court of Appeals will have to consider the same factual record on which this Court granted the other Defendants immunity from suit. Because the same qualified immunity issue on the same factual record

¹ Rule 54(b) reads in pertinent part:

When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

would be involved in both appeals the Court finds it would serve judicial economy to grant the requested judgment.

Second, the need for review of the Court's decision to grant summary judgment in favor of three of the Defendants would only be mooted if the Plaintiff decides not to appeal that decision in the future or the Court decides to reverse itself on that issue. The Court considers both outcomes highly unlikely. Third, permitting an appeal now will prevent the Sixth Circuit from having to reconsider the issues and facts relating to qualified and absolute immunity a second time upon Plaintiffs' post-trial appeal of the summary judgment order. Fourth, there are no set-offs or counterclaims involved in this case. Fifth, immediate appeal will minimize the parties briefing costs and the time demands on the Sixth Circuit imposed by sequential appeals given the overlap in the issues. Finally, immediate appeal will not adversely affect the timing of trial as the Court must already stay this appeal pending the resolution of Defendant Spires' interlocutory appeal. Therefore, upon consideration of the relevant circumstances of this case, the Court finds no just reason to delay appellate review.

Accordingly, the Parties' Joint Motion (doc. no. 73) is **GRANTED**. The Clerk shall enter final judgment dismissing all claims against Defendants Franklin County Board of Trustees, Courtney Allensworth, and John Saros with prejudice, for the reasons set forth in the Court's July 23, 2009 Opinion and Order.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: August 31, 2009