

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VIRGINIA LeFEVER,

Plaintiff,

v.

Case No. 2:11-cv-935

JUDGE GREGORY L. FROST

Magistrate Judge E.A. Preston Deavers

JAMES FERGUSON, et al.,

Defendants.

ALEX LeFEVER,

Plaintiff,

v.

Case No. 2:12-cv-664

JUDGE GREGORY L. FROST

Magistrate Judge E.A. Preston Deavers

JAMES FERGUSON, et al.,

Defendants.

ORDER

This matter is before the Court on Plaintiff Virginia LeFever's motion to certify this Court's decision for appeal under Fed. R. Civ. P. 54(b). (ECF No. 145.) For the reasons set forth below, the Court **GRANTS** Plaintiff's motion for finality certification.

On July 15, 2013, this Court granted in part and denied in part the motion for summary judgment of Defendant James Ferguson. (ECF No. 141.) The Court granted Ferguson summary judgment on Plaintiff's claim alleging a violation of 42 U.S.C. § 1983 premised upon Ferguson's alleged violation of *Brady v. Maryland*, 373 U.S. 83 (1963). (*Id.* at PageID# 4782-88.) The Court found that Ferguson was entitled to qualified immunity from liability on Plaintiff's due

process claim based on Ferguson's alleged *Brady* violation. (*Id.*) The Court denied Ferguson the benefit of qualified immunity, however, on Plaintiff's Section 1983 due process claim premised upon Ferguson's alleged fabrication of evidence against Plaintiff. (*Id.* at PageID# 4788-90.)

Ferguson filed a notice of appeal to the Sixth Circuit, taking an interlocutory appeal of right from the Court's denial of qualified immunity with respect to Plaintiff's claim based on Ferguson's alleged fabrication of evidence. (ECF No. 143.) Plaintiff now asks this Court to certify its decision granting qualified immunity as to her *Brady* claim in order to allow Plaintiff to pursue a cross-appeal of that issue in the Sixth Circuit. Plaintiff contends that the Court's ruling is "final" within the meaning of Fed. R. Civ. P. 54(b) and that there is no just reason for delaying her ability to appeal it. (Pl.'s Mot. 3, ECF No. 145 at PageID# 4816.)

Fed. R. Civ. P. 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. *Corrosioneering, Inc. v. Thyssen Env'tl. Sys., Inc.*, 807 F.2d 1279, 1282 (6th Cir. 1986). Rule 54(b) certification is appropriate where the court has rendered a final decision with regard to one of the parties or claims and finds that there is no just reason to delay appellate review. *AbdulSalaam v. Franklin Cnty. Bd. Of Comm'rs*, No. 06-cv-413, 2009 U.S. Dist. LEXIS 87486 (S.D. Ohio Aug. 31, 2009). In *Corrosioneering*, the Sixth Circuit has articulated the following non-exhaustive list of factors that the district court should consider 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, 807 F.2d at 1283.

In this case, the Court finds that the adjudicated claims and the unadjudicated claims involve the same issue of qualified immunity and the same factual record. The Sixth Circuit will have to review the same underlying facts in order to address both the alleged *Brady* violation and the alleged fabrication of evidence that forms the basis of Plaintiff's Section 1983 claims. And considering that both theories of liability involve the issue of qualified immunity, it would serve the interests of judicial economy to allow Plaintiff to take an appeal from the decision granting qualified immunity at the same time as Ferguson's appeal from the Court's denial of qualified immunity. *See AbdulSalaam*, 2009 U.S. Dist. LEXIS 87486 at *4.

The second factor favors Rule 54(b) certification as well. The Court finds it highly unlikely that the need for review might be "mooted" in the future. The *Brady* violation alleged by Plaintiff is, in the Court's view, the crown jewel of Plaintiff's Complaint. Though the Court granted summary judgment in Ferguson's favor on Plaintiff's *Brady* claim, the Court acknowledges that the issue presented a novel question of law upon which Plaintiff would pursue an appeal after final judgment. Moreover, as it relates to the third factor, allowing an appeal now "will prevent the Sixth Circuit from having to reconsider the issues and facts relating to qualified . . . immunity a second time" upon a post-trial appeal. *AbdulSalaam* at *4-5.

As to the fourth factor, there are no setoffs or counterclaims to consider. Finally, as to the fifth factor, certifying an immediate appeal from the grant of qualified immunity to Ferguson on Plaintiff's *Brady* claim will streamline the appeal process by allowing all the qualified immunity issues to come before the Sixth Circuit at once instead of in sequential appeals. *Id.* at

*5. Further, by certifying its decision and preventing the possibility of sequential appeals, the Court would also reduce the chance of having to convene two trials (*i.e.*, a new trial in the event the Sixth Circuit reversed on the *Brady* issue following a first trial).

Upon consideration of the relevant factors and the circumstances of the present case, the Court finds no just reason to delay appellate review of the Court's decision granting qualified immunity to Defendant Ferguson on Plaintiff's *Brady*-based Section 1983 claim. Accordingly, the Court **GRANTS** Plaintiff's motion for Fed. R. Civ. P. 54(b) certification. (ECF No. 145.) The Clerk shall enter final judgment in favor of Defendant Ferguson on Plaintiff's Section 1983 *Brady* claim alleged in Count I of Plaintiff's Complaint.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE