

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VIRGINIA LeFEVER,

Plaintiff,

v.

JAMES FERGUSON, et al.,

Defendants.

Case No. 2:11-cv-935

JUDGE GREGORY L. FROST

Magistrate Judge E.A. Preston Deavers

ALEX LeFEVER,

Plaintiff,

v.

JAMES FERGUSON, et al.,

Defendants.

Case No. 2:12-cv-664

JUDGE GREGORY L. FROST

Magistrate Judge E.A. Preston Deavers

ORDER

On August 29, 2013, this Court granted Plaintiff Virginia LeFever's motion for certification under Fed. R. Civ. P. 54(b) with respect to Plaintiff's *Brady*-based claim for relief under 42 U.S.C. § 1983 and entered judgment accordingly. (ECF Nos. 146, 147.) Plaintiff immediately filed her notice of appeal to the Sixth Circuit Court of Appeals that same day. (ECF No. 148.)

On September 5, 2013, Defendant James Ferguson filed his memorandum in response to Plaintiff's motion for Rule 54(b) certification. (ECF No. 149.) Plaintiff has filed a reply to

Defendant Ferguson's response. (ECF No. 150.) The matter is before the Court to address matters contained in those filings.

The Court acknowledges, as Ferguson points out in his memorandum, that the Court issued its ruling on Plaintiff's motion for Rule 54(b) certification before Ferguson's time for responding to the motion had expired. Be that as it may, and notwithstanding the salient points *against* Rule 54(b) certification that Ferguson argues in his opposition, the Court has no power to reconsider its certification and entry of judgment allowing Plaintiff to take an immediate appeal. Plaintiff's filing of a notice of appeal divested this Court of jurisdiction to revisit its grant of Rule 54(b) relief. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

The Court remains of the belief that Rule 54(b) certification is proper, as there is no just reason for delaying consideration of an appeal of this Court's ruling that Defendant Ferguson is entitled to qualified immunity for alleged *Brady* violations. The Court recognizes, however, that Ferguson's memorandum makes the question of certification a closer case than the Court previously deemed it to be. But the question of whether the certification ruling was proper is out of this Court's hands. Because Plaintiff's prompt notice of appeal divested this Court of jurisdiction to reconsider its Rule 54(b) ruling, Ferguson will have to raise that issue, if he wishes, at the Sixth Circuit Court of Appeals.

IT IS SO ORDERED.

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