

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

4 GLENDA NISSEN,

5 Plaintiff,

6 v.

7 MARK LINDQUIST, et al.,

8 Defendants.

CASE NO. C16-5093 BHS

ORDER DENYING  
DEFENDANTS'  
MOTION TO STAY

9 This matter comes before the Court on Defendants Mark Lindquist, Mark and  
10 Chelsea Lindquist, and Pierce County's ("Defendants") motion to stay (Dkt. 66).

11 On January 18, 2018, the Court granted in part and denied in part Defendants'  
12 motion to dismiss. Dkt. 59. On January 25, 2018, Defendants appealed the Court's  
13 denial of their immunity defenses. Dkt. 60. On January 25, 2018, Defendants filed a  
14 motion to stay this proceeding pending appeal. Dkt. 62. On January 31, 2018, Plaintiff  
15 Glenda Nissen ("Nissen") responded. Dkt. 66. On February 2, 2018, Defendants replied.  
16 Dkt. 68.

17 An official may immediately appeal the Court's denial of immunities based on  
18 legal questions. *A. K. H by & through Landeros v. City of Tustin*, 837 F.3d 1005, 1010  
19 (9th Cir. 2016). This type of interlocutory appeal "divests the district court of jurisdiction  
20 to proceed with trial." *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992) (citation  
21 omitted). The district court, however, is deprived of jurisdiction only "over the  
22 particular issues involved in that appeal." *City of Los Angeles v. Santa Monica*  
*Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001). In other words, the district court "still has


1 jurisdiction over aspects of the case that are not the subject of the appeal.” *Castro v.*  
2 *Melchor*, 760 F. Supp. 2d 970, 1003 (D. Hawaii 2010) (citations omitted).

3 When considering a motion to stay other aspects of the case pending appeal, a  
4 district court must examine four factors: “(1) whether the stay applicant has made a  
5 strong showing that he is likely to succeed on the merits; (2) whether the applicant will be  
6 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure  
7 the other parties interested in the proceeding; and (4) where the public interest lies.”  
8 *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted).

9 In this case, Defendants have failed to show that a stay is warranted. The Court  
10 concluded that Nissen has asserted at least one allegation that supports each of her claims  
11 despite the existence of immunity defenses. Thus, even if Defendants succeed in  
12 showing that some allegations are barred by immunity, they will not succeed in showing  
13 that all of Nissen’s allegations are barred by either absolute or qualified immunity.  
14 Moreover, Nissen will be prejudiced if the Court stays all of her claims while Defendants  
15 appeal the issue of whether immunity applies to certain parts of her claims. Therefore,  
16 the Court **DENIES** Defendants’ motion.

17 **IT IS SO ORDERED.**

18 Dated this 27th day of February, 2018.

19   
20 BENJAMIN H. SETTLE  
21 United States District Judge  
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