

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY D. LEISER,

Plaintiff,

v.

Case No. 15-cv-768-slc

KAREN KLOTH,
REED RICHARDSON,
and PAULA STOUTD,

Defendants.

DOCKETING STATEMENT

Defendants Karen Kloth, Reed Richardson, and Paula Stoutd, by their attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Rachel L. Bachhuber, hereby submit the following as their Docketing Statement pursuant to 7th Cir. R.3(c)(1) and 28(a):

1. The district court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) based on the existence of a federal question. Specifically, plaintiff Jeffrey L. Leiser brought this action under the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983.

2. Appellate jurisdiction exists pursuant to 28 U.S.C. § 1291.

(i) This appeal is taken from the order of the United States District Court for the Western District of Wisconsin entered on October 19, 2017, (Dkt. 52) (the "Order"), by the Honorable Stephen L. Crocker, which, among other things,

denied qualified immunity to the defendants and otherwise denied the defendants' motion for summary judgment.

(ii) & (iii) No motions have been filed seeking review or alteration of the Order concerning the denial of the defendants' motion for summary judgment.

(iv) A Notice of Appeal was filed with the district court on November 17, 2017.

(v) This is a direct appeal of a decision by a magistrate judge. Plaintiff Leiser consented in writing on April 26, 2016, to the entry of final judgment by the magistrate judge (Dkt. 5); consent in writing was also filed by the defendants on April 26, 2016. (Dkt. 6.)

3. The Order is immediately appealable as a final decision of the district court under 28 U.S.C. § 1291 pursuant to the collateral order doctrine insofar as the Order denied the defendants' summary judgment motion under the doctrine of qualified immunity. Specifically, in denying the defendants' motion for qualified immunity, the district court found that a reasonable jury could conclude that the conduct of these defendants, as alleged, violated the Eighth Amendment and that such a constitutional right was clearly established at the time of the events in question. *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (holding that the denial of qualified immunity, if it turns on a question of law, is an appealable final decision under 28 U.S.C. § 1291); *see also Gibbs v. Lomas*, 755 F.3d 529, 535–36 (7th Cir. 2014). The Order is also immediately appealable under the doctrine of pendant appellate jurisdiction insofar as the Order denied summary judgment to the

defendants on the merits of Leiser's claims alleging violation of his Eighth Amendment rights to be free from cruel and unusual punishment. The determination denying the defendants summary judgment on the merits is intertwined with the determination on defendants' motion for qualified immunity in that it turned on the question of whether a reasonable jury could conclude that the conduct of the defendants was in violation of Leiser's Eighth Amendment rights, which is an issue that also formed part of the qualified immunity analysis. *See, e.g., Abelesz v. OTP Bank*, 692 F.3d 638, 647 (7th Cir. 2012).

Dated this 17th day of November, 2017.

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Wisconsin Attorney General

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