

FILED SEP 09 1997

CARRIE L. SVENDAHL
CLERK OF COURT

IN THE COURT OF APPEALS OF
THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

LITTLE SIX, INC., et al.

Plaintiffs,

VS.

LEONARD PRESCOTT, et al.

Defendants.

Case Nos. Ct. App. 017-97
& Ct. App. 018-97

MEMORANDUM AND ORDER

Plaintiffs Little Six, Inc., et al. (LSI) sued defendants Leonard Prescott and F. William Johnson alleging that in their former positions with LSI they expended monies for improper purposes and without authorization. Defendants filed for summary judgment. Among other claims, Prescott argued he possessed both absolute and qualified immunity from suit and Johnson asserted he possessed qualified immunity. The trial court rejected the immunity arguments, but granted partial summary judgment on other grounds. Prescott and Johnson filed proper notices of appeal, which were certified by the clerk of court. Plaintiffs contend that an appeal, even of the immunity issues, does not lie from a denial of partial summary judgment.

The parties appear confused regarding the proper forum to resolve this dispute. A properly filed notice of appeal divests the trial court of jurisdiction over those aspects of the case involved in the appeal. Griggs v. Provident Consumer Discount Co.,

CCTAP017.004

459 U.S. 56, 58 (1982); Harmon v. Farmers Home Administration, 101 F.3d 574, 587 (8th Cir. 1996). Since the defendants have filed proper notices of appeal, this court now has jurisdiction to consider their claims. Although plaintiffs addressed their memorandum in opposition to the appeal to the trial court (without an accompanying motion), we will sua sponte consider their arguments as having been properly made in this court.

The parties disagree over the immediate appealability of various parts of the trial court order. The collateral order doctrine allows for an immediate appeal of orders which (1) conclusively determine disputed questions, (2) are separate from the merits of the action, and (3) which would be effectively unreviewable on appeal from a final judgment. P.R. Aqueduct & Sewer Authority v. Metcalf & Eddy, 506 U.S. 139, 144-45 (1993) (quotation omitted). Orders rejecting defenses of absolute or qualified immunity are immediately appealable because immunity is not simply a defense from liability, but entitles its possessor to complete protection against suit. P. R. Aqueduct, 506 U.S. at 143; Mitchell v. Forsyth, 472 U.S. 511, 530 (1985). This protection is effectively lost if, based on the lower court's error, the matter goes to trial. Mitchell, 472 U.S. at 526.

The defendants' challenge to the trial court's rulings on immunity falls within the collateral order doctrine and will be heard by this court. The trial court's order conclusively determined the issues of absolute and qualified immunity, those issues are factually separate from the underlying claims, and the

defendant's immunity would be effectively unreviewable on appeal from a final judgment after having to stand trial.

LSI argues that Johnson v. Jones, 515 U.S. 304, 317 (1995) prohibits the immediate appeal of defendants' immunity claims because those claims do not involve "neat abstract issues of law" which are easily resolvable on interlocutory appeal, but rather involve issues of fact which require further development at trial. Johnson held that a defendant entitled to invoke a qualified immunity defense may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a genuine issue of fact for trial. 515 U.S. at 319-20. The public official defendants in Johnson sought to use the immediate appealability of their qualified immunity as a vehicle to obtain appellate jurisdiction over the sufficiency of the evidence regarding the underlying constitutional tort, and the Supreme Court properly rejected their effort. 515 U.S. at 313.

The defendants' attempt to appeal their immunity claims is consistent with Johnson because their claims do not depend on any disputed issues of fact. The trial court denied the immunity claims based on the positions held by defendant Johnson in the LSI Corporation, and defendant Prescott in both the Community and LSI Corporation, and based on its interpretation of various Community Ordinances and LSI's Corporate Charter. These factual matters are not in dispute, therefore, the trial court's rulings on immunity present "abstract issues of law" which can be resolved on interlocutory appeal. See Behrens v. Pelletier, 116 S. Ct. 834,


842 (1996) (explaining reach of Johnson) (citation omitted). Defendants are granted leave to appeal the adverse decisions concerning immunity, but not the merits of the underlying claims against them.

ORDER

For the foregoing reasons:

1. The Defendants are granted leave to file an interlocutory appeal of the adverse decisions below pertaining to the issues of absolute and qualified immunity; and,
2. The Parties will identify dates in which counsel will be available for setting a briefing schedule and to consider whether the matter should be consolidated for purposes of the appeal.

September 9, 1997


Henry M. Buffalo
Judge