

No. 08-6406

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 19, 2009
LEONARD GREEN, Clerk

ROY L. DENTON,)
)
Plaintiff-Appellee,)
)
v.)
)
STEVE RIEVELY, in his individual capacity,)
)
Defendant-Appellant.)

ORDER

Before: MOORE, GILMAN, and ROGERS, Circuit Judges.

The defendant appeals the denial of his motion for summary judgment on grounds of qualified immunity in this civil rights action brought under 42 U.S.C. § 1983 and state law. The plaintiff alleges that the appeal raises questions of fact, not law, and moves for dismissal. The defendant opposes the motion.

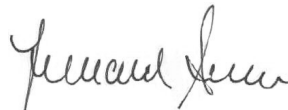
This court has jurisdiction to immediately review a defendant’s claim of qualified immunity pursuant to both *Mitchell v. Forsyth*, 472 U.S. 511 (1985), and *Will v. Hallock*, 126 S. Ct. 952 (2006). See *Barnes v. Wright*, 449 F.3d 709, 714 (6th Cir. 2006). Review is limited, however, to questions of law; a defendant may not appeal solely to challenge the district court’s determination of the factual record. *Johnson v. Jones*, 515 U.S. 304, 319-20 (1995); *Barnes*, 449 F.3d at 714 n. 2; *Dickerson v. McClellan*, 101 F.3d 1151, 1157 (6th Cir. 1996). The district court’s reasons for denying qualified immunity are not controlling. Although the district court’s reasons are not controlling, the defendant “must be prepared to overlook any factual dispute and to concede an

interpretation of the facts in the light most favorable to the plaintiff's case." *Berryman v. Rieger*, 150 F.3d 561, 562 (6th Cir. 1998).

Where genuine issues of material fact regarding a defendant's qualified immunity claim exist, and the defendant makes arguments that rely on disputed facts, this court does not have jurisdiction over the appeal. *McKenna v. City of Royal Oak*, 469 F.3d 559, 562 (6th Cir. 2006). "Where, however, the legal issues are discrete from the factual disputes, we may exercise our jurisdiction to resolve the legal issues only." *Phelps v. Coy*, 286 F.3d 295, 298 (6th Cir. 2002). The defendant raises both legal and factual issues in his appellate brief. In view of this circumstance, we will refer the motion to dismiss to the panel that will be assigned to decide the merits of this appeal.

It is **ORDERED** that the motion to dismiss is referred to the merits panel.

ENTERED BY ORDER OF THE COURT



Leonard Green
Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 19, 2009

Roy L. Denton
120 Sixth Avenue
Dayton, TN 37321

Mr. Ronald Douglas Wells
Robinson, Smith & Wells
633 Chestnut Street
Suite 700
Chattanooga, TN 37450

Re: Case No. 08-6406, *Roy Denton v. Steve Rievely*
Originating Case No. : 07-00211

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Cheryl Borkowski
Case Manager
Direct Dial No. 513-564-7035
Fax No. 513-564-7094

Enclosure