

United States Court of Appeals
For the Eighth Circuit

No. 18-1472

Keilee Fant, individually and on behalf of all others similarly situated; Roelif Carter; Allison Nelson; Herbert Nelson, Jr.; Alfred Morris; Anthony Kimble; Donyale Thomas; Shameika Morris; Daniel Jenkins; Ronnie Tucker; Tonya DeBerry,

Plaintiffs - Appellees,

v.

City of Ferguson, Missouri,

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: September 28, 2018
Filed: January 10, 2019

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

COLLOTON, Circuit Judge.

Keilee Fant and ten others brought a putative class action against the City of Ferguson, alleging several constitutional violations under 42 U.S.C. § 1983. The City moved to dismiss six of seven counts based on sovereign immunity. The district

court¹ denied the motion, and the City seeks interlocutory review of this decision. Because the City disclaims any sovereign immunity for itself, and seeks only to invoke the sovereign immunity of a nonparty, we dismiss the appeal for lack of jurisdiction.

The six counts at issue stem from the City's alleged detention of plaintiffs for their inability to pay traffic fines. The City's motion to dismiss argued that sovereign immunity barred those claims because the alleged injuries are attributable to the Ferguson Municipal Court, which the City says is an arm of the State of Missouri. The district court denied the motion, concluding the City is not entitled to sovereign immunity, and that the amended complaint sufficiently alleges that the plaintiffs' injuries are attributable to the City.

Given that the litigation continues in the district court, the parties dispute whether there is a "final decision" over which this court has appellate jurisdiction. *See* 28 U.S.C. § 1291. The City invokes the well-established principle that an order denying a claim of sovereign immunity is subject to interlocutory appeal under the collateral order doctrine. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 141 (1993). That principle, however, does not apply where the party appealing disclaims any immunity of its own and instead seeks to invoke the immunity of a nonparty. Sovereign immunity protects certain entities against the indignity of suit and the burdens of litigation, *see id.* at 143-44, 146, but this justification for an exception to the final order rule is inapplicable where the claimed sovereign is not a party to the action. The City here does not claim an immunity of its own and instead asserts immunity of the Ferguson Municipal Court. The municipal court is not a party to the action, and we lack jurisdiction on this appeal to

¹The Honorable Audrey G. Fleissig, United States District Judge for the Eastern District of Missouri.

address any potential claim of immunity by the municipal court that might arise in future litigation.

The City points out that this court exercised jurisdiction in *Webb v. City of Maplewood*, 889 F.3d 483 (8th Cir. 2018), where a city claimed sovereign immunity on the ground that a municipal court—allegedly an arm of the State—was the real party in interest. *Id.* at 485-86. In *Webb*, however, the city asserted its *own* alleged sovereign immunity. We exercised jurisdiction to determine whether there was merit to the city’s claim that it was immune from suit. Here, by contrast, the City does not assert sovereign immunity of its own.

For these reasons, the City’s interlocutory appeal is dismissed for lack of jurisdiction. The City’s motion for judicial notice and conditional motion to remand are denied.

United States Court of Appeals
For The Eighth Circuit
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Michael E. Gans
Clerk of Court

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January 10, 2019

Mr. John M. Reeves
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2000 S. Hanley Road
Saint Louis, MO 63144-1524

RE: 18-1472 Keilee Fant, et al v. City of Ferguson, MO

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

JMM

Enclosure(s)

cc: Mr. John J. Ammann
Mr. Nathaniel R Carroll
Mr. Peter J. Dunne
Mr. Mauricio Alfredo Gonzalez
Mr. William A. Hellmich
Mr. Alexander G. Karakatsanis
Mr. Gregory J. Linhares
Mr. Ronald Alan Norwood
Mr. Blake A. Strode
Mr. Andrew E. Tomback
Ms. Alice Tsier

District Court/Agency Case Number(s): 4:15-cv-00253-AGF

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January 10, 2019

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RE: 18-1472 Keilee Fant, et al v. City of Ferguson, MO

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who appeared on the brief and presented argument on behalf of the appellant was John M. Reeves, of Saint Louis, MO.

Counsel who presented argument on behalf of the appellee was Alice Tsier, of New York, NY. The following attorney(s) appeared on the appellee brief; John J. Ammann, of Saint Louis, MO., Mauricio Alfredo Gonzalez, of San Francisco, CA., Nathaniel R Carroll, of Clayton, MO., Blake A. Strode, of Saint Louis, MO., Alexander G. Karakatsanis, of Washington, DC., Andrew E. Tomback, Alice Tsier, Martin B. Sawyer, Larry C. Moscovitz, James C. Robinson and Dorian Panchyson all of New York, NY.

The judge who heard the case in the district court was Honorable Audrey G. Fleissig. The judgment of the district court was entered on February 13, 2018.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

JMM

Enclosure(s)

cc: MO Lawyers Weekly

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