

05-13943

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No. 07-1114

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT



FILED

JUL 23 2007

LEONARD GREEN, Clerk

NATHWAULEEN MASON, et al.,)
)
 Plaintiffs-Appellees,)
)
 v.)
)
 JENNIFER GRANHOLM, et al.,)
)
 Defendants-Appellants,)
)
 WILLIS CHAPMAN, et al.,)
)
 Defendants.)

ORDER

TRUE COPY
 LEONARD GREEN, Clerk
Tate Felder
 Deputy Clerk

U.S. DISTRICT COURT
 ANN ARBOR
 2007 JUL 26 A 11:11
 FILED

Before: CLAY and SUTTON, Circuit Judges; GREER, District Judge.

Thirteen of the eighteen defendants in this prisoners' civil rights case appeal an interlocutory order of the district court, entered on January 23, 2007, granting partial summary judgment for the plaintiffs and denying the defendants' cross-motion for summary judgment. The plaintiffs now move for dismissal. The defendants move to stay further proceedings in the district court pending the outcome of their appeal.

To be appealable, the order granting partial summary judgment for the plaintiffs "must qualify as either a final judgment under 28 U.S.C. § 1291 or an '[i]nterlocutory order[] . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions under § 1292(a)(1).'" *Gillis v United States Dep't of Health and Human Servs.*, 759 F.2d 565, 567 (6th Cir. 1985). A decision is final for purposes of 28 U.S.C. § 1291 if it disposes of all

*The Honorable J. Ronnie Greer, United States District Judge for the Eastern District of Tennessee, sitting by designation.

No. 07-1114

- 2 -

claims and parties on the merits and leaves nothing for the district court to do but execute the judgment. *Catlin v. United States*, 324 U.S. 229, 233 (1945). In the absence of certification for an interlocutory appeal under Fed. R. Civ. P. 54(b), an order disposing of fewer than all claims in a civil action is not immediately appealable. *Good v. Ohio Edison Co.*, 104 F.3d 93, 95 (6th Cir. 1997) (order); *William B. Tanner Co. v. United States*, 575 F.2d 101, 102 (6th Cir. 1978) (per curiam). The January 23 order does not dispose of all claims in the action and thus is not final for purposes of appeal.

The defendants nevertheless claim that they are entitled to immediately appeal the January 23 order pursuant to 28 U.S.C. § 1291(a)(1). The Supreme Court has stated:

Because § 1292(a)(1) was intended to carve out only a limited exception to the final-judgment rule, we have construed the statute narrowly to ensure that appeal as of right under § 1292(a)(1) will be available only in circumstances where an appeal will further the statutory purpose of “permitting litigants to effectively challenge interlocutory orders of serious, perhaps irreparable, consequence.” . . . Unless a litigant can show that an interlocutory order of the district court might have a “serious, perhaps irreparable, consequence,” and that the order can be “effectively challenged” only by immediate appeal, the general congressional policy against piece-meal review will preclude interlocutory appeal.

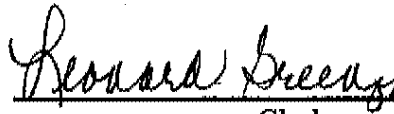
Bradley v. Milliken, 772 F.2d 266, 270 (6th Cir. 1985) (citing *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 89 (1981)). The defendants argue that the partial summary judgment for the plaintiffs “permanently enjoins the State Defendants from raising a valid defense to this lawsuit and in subsequent lawsuits.” This argument is without merit. Any grant of summary judgment effectively enjoins a litigant from presenting an issue to a jury. See *Fouts v. Joy Manufacturing Co.*, 1986 WL 16449 (6th Cir. 1986) (order) (unpublished). “This is not one of those cases where an order which has the practical effect of refusing (or granting) an injunction may be immediately appealable under § 1292(a)(1).” *Id.* at * 1.

No. 07-1114

- 3 -

Accordingly, the plaintiffs' motion to dismiss is **GRANTED** without prejudice to the defendants' right to perfect a timely appeal upon entry of a final judgment in the district court. The defendants' motion to stay further proceedings in the district court pending the outcome of their appeal is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT



Clerk

LEONARD GREEN
CLERK

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FOR THE SIXTH CIRCUIT
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Filed: July 23, 2007

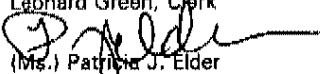
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RE: 07-1114
Mason vs. Granholm
District Court No. 05-73943

Dear Counsel:

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,
Leonard Green, Clerk

(Ms.) Patricia J. Elder
Senior Case Manager

Enclosure

cc: Honorable John Corbett O'Meara
Mr. David J. Weaver