

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROY L. DENTON,)	
)	
<i>Plaintiff, Appellee,</i>)	
)	
v.)	Case No. 08-6406
)	
STEVE RIEVLEY,)	
)	
<i>Defendant-Appellant.</i>)	

APPELLANT STEVE RIEVLEY’S RESPONSE TO
APPELLEE’S MOTION TO DISMISS FOR LACK OF JURISDICTION

Pursuant to *Federal Rule of Appellant Procedure 27*, Appellant Steve Rievley hereby files his Response to Appellee Roy L. Denton’s Motion to Dismiss for Lack of Jurisdiction. Mr. Rievley hereby asserts that his Interlocutory Appeal is appropriately before this honorable Court and respectfully requests that this Court deny Mr. Denton’s Motion to Dismiss. For cause, Mr. Rievley would show this Court as follows:

Mr. Rievley filed his “Civil Appeal Statement of Parties and Issues” with this Court on December 18, 2008. (A copy of this is also attached to Mr. Denton’s Motion to Dismiss as “Exhibit A”). As Mr. Denton’s entire Motion to Dismiss is based upon Mr. Rievley’s Civil Appeal Statement, Mr. Rievley respectfully asks the Court to look to the two separate and distinct issues presented in that Statement. In his Statement, Mr. Rievley proposed to raise two issues on appeal:

first,

whether his warrantless arrest of the Plaintiff on his front porch violated the Plaintiff’s Fourth Amendment rights. Second, ...the District Court’s denial of his

defense of qualified immunity. Specifically, was the District Court correct in denying his defense of qualified immunity of a police officer accused of violating the Plaintiff's constitutional rights when the police officer was acting in accordance with a Tennessee statute that explicitly states that "the preferred response of the officer is arrest" in cases where the officer has probable cause to believe that domestic abuse has occurred whether in his presence or not and when the police officer was acting in accordance with his understanding of Tennessee Attorney General Opinions which state that a police officer may make a warrantless arrest if the officer has probable cause to believe that a crime involving domestic abuse has occurred?

Id. According to Mr. Denton's Motion, he complains that Mr. Rievley's first issue is not ripe for appeal because it challenges a fact of the case, i.e. whether Mr. Denton was arrested on his porch or inside his home. For this, Mr. Denton argues, Mr. Rievley's entire appeal should be dismissed. *See generally, Plaintiff-Appellee's Motion to Dismiss for Lack of Jurisdiction.*

Although Mr. Rievley is appealing the District Court's partial denial of his Motion for Summary Judgment, it is clear that two separate and distinct issues are being appealed. First, there is the issue of whether the District Court was correct in determining that Mr. Rievley's arrest of the Plaintiff violated his constitutional rights. Second, and the basis for the interlocutory appeal pursuant to *Boyd v. Baeppler*, 215 F.3d 594 (6th Cir. 2000); *Cristophel v. Kukulinsky*, 61 F.3d 479 (6th Cir. 1995); *Behrens v. Pelletier*, 516 U.S. 299 (1996); *Johnson v. Jones*, 515 U.S. 304 (1995); *Weaver v. Shadoan*, 340 F.3d 397 (6th Cir. 2003); *Tucker v. City of Richmond*, 388 F.3d 216 (6th Cir. 2004) is the District Court's denial of Mr. Rievley's defense of qualified immunity. Nowhere in Mr. Rievley's Civil Appeal Statement wherein Mr. Rievley presents his second issue for appeal, i.e. the denial of his defense of qualified immunity, does he present any disputed fact. The issue of the District Court's denial of his defense of qualified immunity relates only to undisputed facts and the

law (i.e. Tennessee Attorney General Opinions and a Tennessee statute).¹ Indeed, Mr. Denton kindly highlighted the portion of the Civil Appeal Statement with which he took umbrage, and it was not with Mr. Rievley's second issue presented for appeal (denial of defense of qualified immunity), but rather with the first issue (violation of constitutional right). *See* "Exhibit A", attached to Plaintiff-Appellee's Motion to Dismiss for Lack of Jurisdiction

Thus, it is clear from the Civil Appeal Statement filed by Mr. Rievley that his appeal of the District Court's denial of his defense of qualified immunity is appropriately before this Court and that this Court has jurisdiction over the same. If this Court determines that it does not have jurisdiction to hear Mr. Rievley's first issue as presented in his Civil Appeal Statement, then this Court can so hold. To do so, however, does not require this Court to dismiss Mr. Rievley's entire Appeal as submitted by Mr. Denton.

In conclusion, Mr. Rievley respectfully submits that his Appeal is appropriately before this Court. In the alternative, if this Court determines that the issue of whether the District Court was correct in determining that Mr. Rievley's arrest of the Plaintiff violated his constitutional rights is not properly before this Court, then this Court can dismiss that part of his Appeal while still properly accepting jurisdiction over the denial of his defense of qualified immunity. For these reasons, Mr. Rievley respectfully requests that this Court deny Mr. Denton's Motion to Dismiss his Appeal.

Respectfully submitted,

¹Mr. Rievley filed his Appellant Brief with this Court on March 2, 2009 addressing both issues. For a complete recitation of Mr. Rievley's argument as it relates to his defense of qualified immunity, Mr. Rievley would respectfully refer this Court to his Appellant Brief.

