

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Bottari v. Fisher

341 F. App'x 716 (2d Cir. 2009) · Decided August 13, 2009

SUMMARY

The Second Circuit dismissed an interlocutory appeal from the denial of police officers’ motion for summary judgment based on qualified immunity. Because the denial rested on genuine disputes of material fact concerning the arrest, the court held that it lacked jurisdiction under 28 U.S.C. § 1291 and that no exception applied.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Calabresi; Parker; Raggi
JURISDICTION	Federal
DECIDED	August 13, 2009
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants appealed from an interlocutory order denying their motion for summary judgment based on qualified immunity.
STANDARD OF REVIEW	The court applied the jurisdictional rule governing interlocutory appeals from denials of summary judgment based on qualified immunity and reviewed whether an exception permitted appeal despite disputed facts.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	David Fisher, Michael Stevenson v. Andrew Bottari

TOPICS

- qualified immunity
- summary judgment
- interlocutory appeal
- appellate jurisdiction
- civil rights

PRACTICE AREAS

- civil procedure
- appellate procedure
- civil rights
- qualified immunity
- summary judgment

QUESTIONS PRESENTED

1. Whether the Second Circuit had jurisdiction over an appeal from a denial of summary judgment based on qualified immunity where the district court found genuine disputes of material fact.
2. Whether the disputed-facts exception to the ordinary bar on interlocutory review applied because the officers' qualified-immunity defense was supported by stipulated facts, facts accepted for purposes of appeal, or the plaintiff's version of the facts.

HOLDINGS

1. The court lacked jurisdiction to review the district court's denial of summary judgment asserting qualified immunity because the denial rested on genuine disputes of material fact and therefore was not a final decision.
2. No exception to the jurisdictional rule applied because the officers' submissions did not support their qualified-immunity defense on stipulated facts, facts accepted for purposes of appeal, or Bottari's version of the facts.

KEY QUOTATIONS

“Where, as here, the district court denies a summary judgment motion asserting qualified immunity because of a dispute over genuine issues of material fact, we do not have jurisdiction to hear an appeal of that order because the district court’s denial is not a final decision.” (717)

“Since the police officers’ submissions do not support their qualified immunity defense on stipulated facts, facts accepted for purposes of the appeal, or the plaintiffs version of the facts, no exception to this rule applies.” (717)

FACTUAL BACKGROUND

Bottari alleged that police officers David Fisher and Michael Stevenson violated his federal and state constitutional rights during his arrest. The district court found that the parties presented materially different accounts of what occurred and that the record was insufficient for a fact-intensive qualified-immunity determination. The officers appealed the denial of summary judgment.

PROCEDURAL HISTORY

The Southern District of New York denied the police officers' Federal Rule of Civil Procedure 56 motion for summary judgment, finding genuine issues of material fact concerning the circumstances of Bottari's arrest and refusing to dismiss his constitutional claims. The Second Circuit dismissed the appeal for lack of appellate jurisdiction because the denial was based on disputed material facts and was not a final decision.

DISPOSITION

dismissed

CASES CITED

- *Genas v. State of New York Department of Correctional Services*, 75 F.3d 825, 830 (2d Cir. 1996)

- Salim v. Proulx, 93 F.3d 86, 89-90 (2d Cir. 1996)

OPINION

PER CURIAM.

SUMMARY ORDER Defendants-Appellants David Fisher and Michael Stevenson (“police officers”) appeal from an order of the United States District Court for the Southern District of New York (Briant, J.). The court denied the police officers’ motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 on grounds of qualified immunity because it found that genuine issues of material fact existed regarding the circumstances of the arrest of Plaintiff-Appellee Andrew Bottari (“Bottari”).

The court therefore refused to dismiss Bottari’s claims for declaratory relief, damages and attorney’s fees arising out of the alleged violation of his federal and state constitutional rights. We assume the parties’ familiarity with the underlying facts, procedural history and issues on appeal.

We dismiss this appeal because we lack jurisdiction to hear it. The district court denied the motion because “the [parties’] different views of what took place and the facts... [were] so great” that there was not “an adequate record... to dismiss the case” on the basis of a “fact intensive” qualified immunity determination. (Hearing Tr. 6-7, May 16, 2008). Where, as here, the district court denies a summary judgment motion asserting qualified immunity because of a dispute over genuine issues of material fact, we do not have jurisdiction to hear an appeal of that order because the district court’s denial is not a final decision.

Genas v. State of New York Dep’t of Corr. Servs., 75 F.3d 825, 830 (2d Cir.1996) (“[I]mmediate appeal is not permitted if the district court’s denial of summary judgment for qualified immunity rests on a finding that there were material facts in dispute.”); see 28 U.S.C. § 1291 (“The courts of appeals... shall have jurisdiction of appeals from all final decisions of the district courts of the United States----”).

Since the police officers’ submissions do not support their qualified immunity defense on stipulated facts, facts accepted for purposes of the appeal, or the plaintiffs version of the facts, no exception to this rule applies. See Salim v. Proulx, 93 F.3d 86, 89-90 (2d Cir.1996).

For this reason, the appeal of the district court’s judgment is DISMISSED.