

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

KENNETH E. HARDY

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-477-S

JEFFERSON COMMUNITY COLLEGE, et al

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Motion for Default Judgment and the Motion to Compel Discovery made by the Plaintiff, Kenneth E. Hardy. Hardy asks for a default judgment on the basis that the Defendants have not filed an answer to his Complaint. Hardy also seeks to compel discovery from the Defendants despite the fact that the Defendants have taken an interlocutory appeal from this Court's Order denying their claim of qualified immunity. For the reasons that follow, Plaintiff's motions will be denied.

Hardy asserts that the failure of the Defendants to file an answer should result in this Court entering a default judgment. A review of the procedural history of this case, however, demonstrates that the Defendants are not yet required to file an Answer. On August 12, 1999, the Defendants filed a motion to dismiss Plaintiff's Complaint. In its Order of December 15, 1999, this Court ruled on part of that motion, and deferred part of the motion. On December 27, 1999, Hardy filed a motion to reconsider part of the Court's Order of December 15, 1999. The Court ruled upon the remainder of the motion to dismiss on January 26, 2000, and denied Hardy's motion to reconsider on February 1, 2000. Thus, the motion to dismiss was not ultimately resolved until February 1, 2000. The Defendants had ten (10) days from that date to file their answer. Instead, on February 11, 2000, the Defendants filed a Notice of Appeal from the denial of the motion to dismiss.

The filing of a notice of appeal generally divests a district court of jurisdiction over a case, and transfers jurisdiction to the appellate court. *Lewis v. Alexander*, 987 F.2d 392, 394-395 (6th Cir.

1993). Defendants' appeal falls into none of the exceptions to that general rule. Therefore, Defendants are not required to file an answer until their appeal is resolved by the Court of Appeals.

Hardy also seeks to compel discovery, claiming 1) that the Defendants are not entitled to an appeal at this stage of the proceeding, and 2) even if the appeal is proper, discovery should proceed on issues which have not been appealed. Hardy's claim that the appeal is improper is not within the jurisdiction of this Court to decide, and in fact, that matter is before the Court of Appeals at this time. The Supreme Court has made clear that the issue of whether a public official is entitled to qualified immunity should be resolved as early in the litigation as possible, and discovery should be stayed until the Defendants' appeal is resolved. *See Mitchell v. Forsyth*, 472 U.S. 511, 525-26 (1985); *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982).

The Court will also deny Hardy's request to proceed with discovery on those issues which have not been appealed by the Defendants. If partial discovery is permitted now and the Defendants' appeal is unsuccessful, then much of the discovery would have to be redone in order to cover the issues relevant to qualified immunity. Such duplicative effort is not an efficient use of judicial resources, or the resources of the parties.

IT IS HEREBY ORDERED AND ADJUDGED that the Motion for Default Judgment and the Motion to Compel Discovery made by the Plaintiff are **DENIED**.

IT IS SO ORDERED this _____ day of _____, 2000.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record