RENDERED: SEPTEMBER 15, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000260-MR

ALLISON HEMBREE; MISTY SWEENEY;
WILL NOBLE; ANDREA ARAGON;
TAMMY CLARK; ANDREA HOWARD;
and ELLEN MOTLEY — APPELLANTS

v.

APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM LANE, JUDGE
ACTION NO. 14-CI-90038

NATHAN WAYNE BOWMAN and
JESSICA ANN BOWMAN, as Parents,
Natural Guardians and Next Friends of
the Infant, COLTYN LEE BOWMAN — APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; D. LAMBERT AND NICKELL, JUDGES.

KRAMER, CHIEF JUDGE: The events relevant to this appeal occurred on April 22, 2013. On that date, Coltyn Lee Bowman and several of his classmates from Morgan County Middle School were on a field trip at the picnic area of Cave Run Lake in Bath County. During the field trip, one of Coltyn's classmates struck Coltyn in the face with the seat of a swing set and injured him.

Thereafter, Coltyn and his parents filed suit in Bath Circuit Court against several individuals associated with Morgan County Middle School who were responsible, to varying degrees, for supervising the field trip. These defendants consisted of teachers who were directly supervising the students at the time (*i.e.*, Allison Hembree; Misty Sweeney; Will Noble; Andrea Aragon; Tammy Clark; Andrea Howard; and Ellen Motley (collectively the "teacher defendants")), and two school administrators (*i.e.*, Terry Whitt, who was the Principal at Morgan County Middle School; and Deatrah Barnett, who was the Superintendent of the Morgan County Board of Education (collectively the "administrator defendants")). In sum, Coltyn and his parents claimed that but for the allegedly negligent supervision provided by these defendants, Coltyn's injuries would not have occurred.

Subsequently, the defendants moved to summarily dismiss Coltyn's claims of negligent supervision based upon qualified official immunity, but their motions were denied. As to the teacher defendants, the circuit court merely explained that "issues of fact and law remain." As to the administrator defendants, it merely explained summary judgment was denied "as premature at this time."

This appeal followed.

Before we proceed to our resolution of this appeal, some minor clarification is required. The appellate brief filed in this matter collectively refers to the teacher defendants *and* the administrator defendants as "appellants" and purports to advocate *all* of their interests as such. But, as the caption of this opinion indicates, only the teacher defendants qualify as appellants—they filed a notice of appeal in this matter, whereas the administrator defendants did not.[1]

Ultimately, however, that point is purely academic. Upon review, we *sua sponte* dismiss this appeal for lack of jurisdiction.[2]

An order denying a motion for summary judgment is interlocutory in nature. It is not a final order, and it is therefore generally not appealable. *See Battoe v. Beyer*, 285 S.W.2d 172 (Ky. 1955) (citations omitted). There are some exceptions to this rule. For example, a circuit court's denial of a claim of immunity, to the extent that it turns on an issue of law, is an appealable "final decision" notwithstanding the absence of a final judgment." *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 2817, 86 L.Ed.2d 411 (1985) (adopted by *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886–87 (Ky. 2009)).

[1] The administrator defendants were listed in the caption of the notice of appeal as "defendants," but the only parties designated as "appellants" in the notice were the teacher defendants. At most, that would qualify the administrator defendants as *appellees*. *See Schulz v. Chadwell*, 548 S.W.2d 181, 184 (Ky. App. 1977) ("In the absence of any specific designation using the terms 'appellee,' any party, other than an appellant, who is specifically named in the caption will be deemed to be an appellee.").

[2] The matter of our appellate jurisdiction is an issue we are required to raise *sua sponte*, "as it cannot be acquired by waiver, consent, or estoppel." *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005) (footnotes omitted).

However, in the context of any such exception, the decision embodied in the interlocutory order must, to be subject to our review, "conclusively determine the disputed question," and that question must involve a "claim of right separable from, and collateral to, rights asserted in the action." *Mitchell,* 472 U.S. at 527, 105 S.Ct. at 2816.

With that said, a circuit court does not conclusively determine any disputed question, resolve any right, or otherwise provide this Court with anything to review where its interlocutory order denies a claim of immunity, or any other kind of claim, on the basis that in its view further discovery is needed, or genuine facts remain. Here, the circuit court did not make a finding as a matter of law on the issue of qualified immunity, which we could review. Rather, the circuit court found that there are genuine issues of material fact, making this appealed order interlocutory, which we cannot review. We have repeatedly held that such interlocutory orders are not appealable under any exception, and thus not subject to the jurisdiction of this Court. *See Farris v. Columbia*, No. 2015-CA-000448-MR, 2017 WL 464798, at *2 (Ky. App. Feb. 3, 2017); *Hyden–Leslie Water Dist. v. Jessie Hoskins & Perry Const., Inc.*, No. 2010–CA–000599–MR, 2011 WL 919818, at *2 (Ky. App. Mar. 18, 2011); *Adair Cty. v. Stearman*, No. 2010–CA–001953–MR, 2011 WL 4103137, at *2 (Ky. App. Sept. 16, 2011).[3] Moreover, binding precedent mandates this result. *See Chen v. Lowe*, ---S.W.3d---, 2017 WL 2209911 (Ky. App. 2017).

[3] For this proposition of law, we find these non-published cases persuasive and proper to cite pursuant to Kentucky Rule of Civil Procedure (CR) 76.28(4)(c).

Based on the foregoing, this appeal is DISMISSED.

ALL CONCUR.

ENTERED: September 15, 2017

/s/ Joy A. Kramer
CHIEF JUDGE, COURT OF APPEALS

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