UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-2390

C.H., by and through her Parents and Guardians Daryl Lewis Hardwick and Priscilla Lea Hardwick,

Plaintiff – Appellant,

v.

MARTHA HEYWARD, in her individual capacity and in her official capacity as Principal of Latta Middle School; GEORGE H. LIEBENROOD, JR., in his individual capacity and in his official capacity as Principal of Latta High School; BOARD OF TRUSTEES OF LATTA SCHOOL DISTRICT DILLON COUNTY NO. 3,

Defendants – Appellees.

NATIONAL SCHOOL BOARDS ASSOCIATION; SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION,

Amici Supporting Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, District Judge. (4:06-cv-01042-TLW)

Argued: October 27, 2010 Decided: December 10, 2010

Before NIEMEYER, SHEDD, and AGEE, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

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ARGUED: Kirk David Lyons, SOUTHERN LEGAL RESOURCE CENTER, INCORPORATED, Black Mountain, North Carolina, for Appellant. Vinton D. Lide, LIDE & PAULEY, LLC, Lexington, South Carolina, for Appellees. **ON BRIEF:** Michael S. Pauley, LIDE & PAULEY, LLC, Lexington, South Carolina; Vernie L. Williams, CHILDS & HALLIGAN, Columbia, South Carolina, for Appellees. Francisco M. Negrón, Jr., General Counsel, Lisa E. Soronen, Nancy Dinsmore, NATIONAL SCHOOL BOARDS ASSOCIATION, Alexandria, Virginia; Scott Price, General Counsel, SOUTH CAROLINA SCHOOL BOARDS ASSOCIATION, Columbia, South Carolina, for Amici Supporting Appellees.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

C.H., by and through her parents and guardians, appeals the summary judgment entered against her on her civil rights claims. For the following reason, we dismiss the appeal and remand the case to the district court for further proceedings.

C.H. brought this action for damages and injunctive relief asserting that the defendants violated several of her federal and state constitutional rights by prohibiting her from wearing to school clothing that they determined was in violation of the schools' dress codes.[1] Among her claims, she contends that the defendants violated her First Amendment right to free speech by prohibiting her from wearing clothing that (1) displayed the confederate flag and (2) protested the dress codes (the "protest clothing").

The defendants moved for summary judgment on C.H.'s claims to the extent they involve the confederate flag clothing. The district court entered summary judgment in their favor, holding that they did not violate any of C.H.'s constitutional rights by prohibiting her from wearing confederate flag clothing. Hardwick v. Heyward, 674 F.Supp.2d 735 (D.S.C. 2009). Noting

[1] C.H. sued Martha Heyward, in her individual capacity and official capacity as Principal of Latta Middle School; George H. Liebenrood, Jr., in his individual capacity and official capacity as Principal of Latta High School; and the Board of Trustees of Latta School District (Dillon County No. 3).

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that the defendants had agreed during the pendency of the litigation to permit C.H. to wear the protest clothing, the court stated in its summary judgment order that the protest clothing was "not in dispute" and "not before the Court at this time." Id. at 729 n.3. Because the defendants did not move for summary judgment as to C.H.'s First Amendment claim for damages involving the protest clothing, the court never resolved that claim.[2]

On appeal, C.H. argues that the district court erred in granting summary judgment against her on claims involving confederate flag clothing. She also contends that we must vacate the summary judgment and remand this case in any event because the court did not address her First Amendment damages claim insofar as it relates to the protest clothing.[3] In their brief, the defendants address C.H.'s arguments concerning the confederate flag clothing, but they inexplicably do not address her argument that the case must be remanded for the court to consider her First Amendment damages claim involving the protest clothing.

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[2] It is unclear whether any of C.H.'s other causes of action involve the protest clothing. However, that issue is immaterial for our purposes and is a matter the district court may consider on remand.

[3] Notably, C.H. did not alert the district court of this fact.

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Although the parties have not questioned our jurisdiction, we have "an obligation to verify the existence of appellate jurisdiction before considering the merits of an appeal." Palmer v. City Nat'l Bk., of W.Va., 498 F.3d 236, 240 (4th Cir. 2007), cert. denied sub nom. City Nat. Bk. of W.Va. v. Dept. of Agric., Farm Serv. Agency, 553 U.S. 1053 (2008). "With few narrow exceptions" that are not present here, "our jurisdiction extends only to 'appeals from . . . final decisions of the district courts of the United States.'" United States v. Myers, 593 F.3d 338, 344 (4th Cir. 2010) (quoting 28 U.S.C. § 1291).

A "final decision" is one that "fully resolve[s] all claims presented to the district court" and leaves "nothing further for the district court to do." Aluminum Co. of Am. v. Beazer East, Inc., 124 F.3d 551, 557 (3d Cir. 1997). In considering whether a decision is "final" under § 1291, "the label used to describe the judicial demand is not controlling, meaning we analyze the substance of the district court's decision, not its label or form." Dodge v. Cotter Corp., 328 F.3d 1212, 1221 (10th Cir. 2003) (citation omitted and internal punctuation modified). "[W]hen the record clearly indicates that the district court failed to adjudicate the rights and liabilities of all parties, the order is not and cannot be presumed to be final, irrespective of the district court's intent." Witherspoon v. White, 111 F.3d 399, 402 (5th Cir. 1997).

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