Nos. 21-3735 and 21-3821

United States Court of Appeals for the Eighth Circuit

No. 21-3735

James Van Nguyen,

Appellant,

v.

Patricia Foley, in her individual and official capacity, et al.,

Appellees.

No. 21-3821

James Van Nguyen,

Appellee,

v.

Patricia Foley, in her individual and official capacity, et al.,

Appellants.

Appeal from the U.S. District Court for the District of Minnesota
Case No. 0:21-cv-00991-ECT-TNL

BRIEF OF APPELLEE JODY ALHOLINNA

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Summary of the Case and Waiver of Oral Argument

Appellee Jody Alholinna was the court-appointed guardian ad litem in child custody proceedings before the Tribal Court of the Shakopee Mdewakanton Sioux Community relative to Appellant James Nguyen's minor child. Appellant sued Alholinna and the other Appellees in the United States District Court for the District of Minnesota. Appellant's claims against Alholinna were dismissed under Fed. R. Civ. P. 12(b)(6) on the grounds of absolute quasi-judicial immunity.

Appellant's notice of appeal specifically did not include the paragraphs of the judgment disposing of the claims against Alholinna. Appellant's brief makes no reference to Alholinna or the grounds for dismissing the claims against her. Instead, both the notice of appeal and the brief challenge the dismissal of the claims against the other Appellees. Because Appellant has not challenged the district court's proper dismissal of the action as against Alholinna, this Court should affirm the dismissal as to her regardless of its disposition of the remainder of the appeal.

Because this is a pro se matter, the decisional process would not be significantly aided by oral argument. Accordingly, Alholinna does not request oral argument.

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Jurisdictional Statement

Appellant invoked the district court's jurisdiction under 28 U.S.C. § 1331 by asserting claims under 42 U.S.C. § 1983, 25 U.S.C. § 1302, and 18 U.S.C. § 2701. (R. Doc. 4, at 5.) This Court has jurisdiction under 28 U.S.C. § 1291 over the claims against the other Appellees because the district court entered the final judgment on October 28, 2021, (R. Doc. 43, at 1–2), and Appellant timely filed the notice of appeal on November 24, 2021, challenging the dismissal of the claims against the other Appellees. (R. Doc. 51, at 2). However, Appellant did not file a notice of appeal seeking relief from the dismissal of his claims against Alholinna. *See* (R. Doc. 51, at 2) (seeking relief from only Paragraphs 2–5 of the judgment). Therefore, the Court lacks jurisdiction over the claims against Alholinna. *See Gustafson v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, 29 F.4th 406, 413 (8th Cir. 2022) (stating that this Court does not have jurisdiction over decisions intentionally excluded from the notice of appeal).

Statement of Issues

1. **Whether this Court has appellate jurisdiction over a claim that was specifically excluded from the notice of appeal.**

   Apposite Authorities:

   Fed. R. App. P. 3 (2021)

   Gustafson v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist., 29 F.4th 406 (8th Cir. 2022)

2. **Whether an appellant waives consideration of issues that he does not raise or address in his opening brief.**

   Apposite Authorities:

   Jenkins v. Winter, 540 F.3d 742 (8th Cir. 2008)

3. **Whether a tribal court guardian ad litem is entitled to absolute quasi-judicial immunity for actions within the scope of their office.**

   Apposite Authorities:

   Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005)

   Penn v. United States, 335 F.3d 786 (8th Cir. 2003)

Statement of the Case

In the proceedings below, Appellant alleged that Appellee Jody Alholinna acted as a court-appointed guardian ad litem for Appellant's minor child in a proceeding before the Tribal Court of the Shakopee Mdewakanton Sioux Community. (R. Doc. 4, at 5.) Alholinna moved to dismiss the complaint against her on the grounds of the absolute quasi-judicial immunity afforded her by her role in the tribal court proceedings. (R. Doc. 15, at 1.) In its October 27, 2021 Opinion and Order, the District Court[1] dismissed the Amended Complaint as against all of the Appellees. (R. Doc. 42, at 26–27.) The dismissal of the action as against Alholinna was grounded on the absolute quasi-judicial immunity afforded to guardians ad litem. (R. Doc. 42, at 22–26.)

The "order" portion of the District Court's opinion and order consists of six numbered paragraphs. (R. Doc. 42, at 26–27.) Paragraphs 1 and 6 disposed of the claims against Alholinna. (R. Doc. 42, at 26–27.) Paragraphs 2–5 disposed of the claims against the other Appellees, whom the District Court referred to as "the Community Defendants." (R. Doc. 42, at 26–27.) The judgment the Clerk of Court entered restated the ordered relief using the same numbered paragraphs the District Court had used. R. (Doc. 43, at 1–2.)

[1] The Honorable Eric C. Tostrud.

On November 24, 2021, Appellant filed a notice of appeal as to "the number of the order (2) - (5) through the Court's Order (Doc. 43)." (R. Doc. 51, at 2.) Respondent did not file a notice of appeal challenging Paragraphs 1 and 6 of the judgment. Appellant's brief does not reference or challenge the dismissal of the action as against Alholinna.

Summary of Argument

Appellant has not appealed, and in his brief does not challenge, the proper dismissal of his claims against Alholinna, which this Court should affirm regardless of its disposition of the claims Appellant actually appealed.

Argument

I. Standard of Review.

Appellate jurisdiction presents a question of law that this Court addresses in the first instance to satisfy itself of its authority to resolve an appeal. *Jones v. United States*, 727 F.3d 844, 846 (8th Cir. 2013). This Court reviews the grant of a motion to dismiss de novo. *BNSF Ry. Co. v. Seats, Inc.*, 900 F.3d 545, 546 (8th Cir. 2018).

II. The Court Lacks Appellate Jurisdiction Over the Dismissal of the Claims against Alholinna because Appellant Did Not Appeal Them.

At the time the notice of appeal was filed, Appellant was required to "designate the judgment, order, *or part thereof* being appealed." Fed. R. App. P. 3(c)(1)(B) (2021) (emphasis added).[2] Under this formulation, when the notice of appeal manifests an intent to appeal specific decisions of the district court, appellate jurisdiction does not attach to review decisions outside of delineated scope of the notice. *Gustafson v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, 29 F.4th 406, 413 (8th Cir. 2022). Although the Court will liberally construe notices of appeal that demonstrate an apparent intent to take a broader appeal, it will not adopt such a construction when the notice of appeal expressly limits itself. *Id.*

Here, the notice of appeal specifically enumerated the paragraphs of the judgment that Appellant is challenging, and that express enumeration *includes* the paragraphs dismissing the claims against the other Appellees and *excludes* the paragraphs dismissing the claims against Alholinna.

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[2] As of December 1, 2021, the rule only requires that the notice of appeal designate "the judgment—or the appealable order—from which the appeal is taken." Fed. R. App. P. 3(c)(1)(B) (2022). However, the deadline for Appellant's appeal expired before the effective date of this rule change, by which time it was too late for Appellant to establish jurisdiction.

The notice of appeal clearly manifests the intent to only appeal Paragraphs 2–5 of the judgment. Thus, this Court is without appellate jurisdiction over Paragraphs 1 and 6, which Appellant specifically excluded from his notice of appeal. Because Paragraphs 1 and 6 dispose of the claims against Alholinna, this Court lacks appellate jurisdiction to review the dismissal of those claims.

III. Appellant Did Not Brief, and Thus Waived Appellate Review of, the Dismissal of the Claims Against Alholinna.

"Claims not raised in an opening brief are deemed waived." *Jenkins v. Winter*, 540 F.3d 742, 751 (8th Cir. 2008). Even if the Court were to construe the notice of appeal as to "the number of the order (2) - (5) through the Court's Order (Doc. 43)," (R. Doc. 51, at 2), as encompassing Paragraphs 1 and 6 of the judgment, Appellant's brief does not challenge or address the Court's dismissal of the claims against Alholinna on the grounds of absolute quasi-judicial immunity.

Were this Court to hold it had appellate jurisdiction over the claims against Alholinna, it should affirm the district court dismissal of the claims because Appellant waived review of the dismissal by failing to brief them.

IV. The District Court Correctly Held Alholinna Was Entitled to Absolute Quasi-Judicial Immunity.

Absolute immunity "defeats a suit at the outset, so long as the official's actions were within the scope of the immunity," even if the official should have known that the acts clearly violated the plaintiff's rights. *Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13, 96 S. Ct. 984 (1976). Guardians ad litem are entitled to absolute quasi-judicial immunity for their work in performance of duties that are an integral part of the judicial process. *Dornheim v. Sholes*, 430 F.3d 919, 925 (8th Cir. 2005).

Tribal court judges are entitled to the same absolute judicial immunity that applies to state and federal judicial officers. *Penn v. United States*, 335 F.3d 786, 789 (8th Cir. 2003). This Court has approved extending absolute quasi-judicial immunity to tribal court officials for their actions in conformity to the tribal judge's orders to the same extent as might be extended to the officials of state and federal courts. *Id.* Although the district court recognized this Court has not applied this broad principle to the specific context of tribal court guardians ad litem, *Nguyen v. Foley*, No. 21-CV-991, 2021 WL 4993412, at *10 (D. Minn. Oct. 27, 2021), Appellant has offered no justification for carving out a specific exception to the general rule. Because the considerations warranting the absolute quasi-judicial immunity of state and federal court guardians ad

litem apply with equal force to their tribal court counterparts, the Court should not carve out such an exception.

Accordingly, were the Court to reach the merits of Paragraphs 1 and 6 of the judgment, it should affirm.

Conclusion

Appellant has not appealed, and in his brief does not challenge, the proper dismissal of his claims against Alholinna. To the extent this Court determines it has jurisdiction over such claims, it should affirm Paragraphs 1 and 6 of the judgment that dismissed the claims against Alholinna because her work as a court-appointed guardian ad litem is entitled to absolute quasi-judicial immunity.

Dated: April 21, 2022

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Certificate of Compliance with Virus Scan

Pursuant to 8th Cir. R. 28A(h), the undersigned certifies that the brief and addendum have been scanned for viruses and are virus free.

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