UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1009

H.H., a minor, by and through her mother and next friend, H.F.; H.F.,

Plaintiffs - Appellees,

v.

WANDA MOFFETT, individually and in her official capacity as an employee of the Chesterfield County School Board; ANN

MINGUZZI, individually and in her official capacity as an employee of the Chesterfield County School Board,

Defendants - Appellants,

and

CHESTERFIELD COUNTY SCHOOL BOARD; MARCUS J. NEWSOME, in his official capacity as Superintendent of Chesterfield County Schools,

Defendants.

Appeal from the United States District Court for the Eastern

ARGUED: Steven Latham Micas, COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Appellants. William Henry Hurd, TROUTMAN SANDERS, L.L.P., Richmond,

COUNTY ATTORNEY'S OFFICE FOR THE COUNTY OF CHESTERFIELD, Chesterfield, Virginia, for Appellants. Kevin W. Mottley, Stephen A. Northup, Siran S. Faulders, Stephen C. Piepgrass, TROUTMAN SANDERS, L.L.P., Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

GREGORY, Circuit Judge:

This case concerns the treatment of a severely disabled little girl, H.H., by the Appellants, a special education teacher and a teaching assistant. H.H. and her mother, the Appellees, have alleged, in an action brought under 42 U.S.C.

§ 1983 (2000), that Appellants maliciously kept H.H. restrained in her wheelchair for hours at a time during the school day, while they ignored her, verbally abused her, and schemed to deprive her of educational services. The evidence taken in the light most favorable to the Appellees demonstrates that

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freedom from undue restraint under the Fourteenth Amendment, and

books, playing with musical instruments/toys, swinging, being with other children, playing on the computer and crawling on playgrounds." (J.A. 368.) But, because she cannot yet walk on her own, H.H. is transported in a wheelchair equipped with a safety strap that prevents her from falling out.

From September 2002 until June 2005, H.H. was enrolled in pre-school at Marguerite Christian Elementary School in Chesterfield County, Virginia. According to H.F., H.H. was happy at Marguerite Christian and was always an active participant in her class. At the end of the 2004-2005 school year, H.H. graduated from pre-school and was assigned to a kindergarten program at Chesterfield County's O.B. Gates Elementary School ("O.B. Gates") for the 2005-2006 school year. O.B. Gates is a magnet school that serves both general education students and students with special needs and disabilities.

for 25-30 minutes every week; hygiene instruction, including

toilet training, 3 times a day every day; floor play, at least twice a day; mobility training for 30 minutes every day; and recess (where she played both in and out of her chair) for 30 minutes every day. Scheduled activities in which H.H. generally was to remain seated included: 90 minutes of individual

minutes every week; group library training for 20 minutes every week; group art training for 20 minutes every week; lunch in the cafeteria for 30 minutes every day; and classroom group circle time for an hour every day.

H.H. was assigned to Wanda Moffett's multi-aged class of

screaming. H.H.'s time at home after school and on the weekends was generally "calm and happy" by contrast. (J.A. 371.) According to H.F., H.H. also began to experience an increasing number of "grand mal" seizures[1] during the 2005-2006 school year.

received almost no educational services.[4] Instead, Moffett and Minguzzi kept H.H. in her chair and ignored her, spending their time gossiping, making fun of both H.H. and other children in the school, and conspiring about how to prevent H.H. from receiving extended school-year services. The audio recordings

"coddled," and "has a face only a mother could love." The

On April 17, 2007, H.F. filed a complaint in the United States District Court for the Eastern District of Virginia, on behalf of her daughter and herself, against Moffett, Minguzzi, the Chesterfield County School Board ("CCSB"), and Superintendent of Chesterfield County Schools Marcus Newsome.

The complaint included a claim under 42 U.S.C. § 1983 (2000), alleging a violation of H.H.'s Fourteenth Amendment rights, as well as common law claims of intentional infliction of emotional distress and false imprisonment, and claims of violations of the Americans with Disabilities Act and the Rehabilitation Act. On

protective order.[6] (J.A. 556.) The district court found that the parties disputed material facts regarding defendants' treatment of the plaintiffs that would affect the outcome of the case, and that much of the relevant evidence was in the control of defendants. Thus, in the district court's view, defendants' motion for summary judgment was "premature" and the court would defer ruling on it until plaintiffs had "adequate time to conduct discovery." (J.A. 551-52.) The district court went on

question raised by the Appellees. Appellants claim that we have jurisdiction to hear this appeal under Mitchell v. Forsyth, 472 U.S. 511 (1985). Appellees counter, however, that a decision to hold a motion for summary judgment in abeyance is not an immediately appealable final decision, even under Mitchell.

Section 1291 of Title 28 of the United States Code vests courts of appeals with "jurisdiction of appeals from all final decisions of the district courts of the United States." Denials of motions for summary judgment are generally not considered "final decisions" and are therefore not appealable. See Smith v. Diffee Ford-Lincoln-Mercury, Inc., 298 F.3d 955, 966 (10th Cir. 2002). But in Mitchell, the Supreme Court recognized that

The Mitchell Court recognized that, because qualified immunity is "an immunity from suit rather than a mere defense to liability," the entitlement "is effectively lost if a case is

[illegible]

denial of summary judgment "conclusively determines the defendant's claim of right not to stand trial on the plaintiff's allegations." Id. at 527 (emphasis omitted). Moreover, a qualified immunity determination presents a discrete question of law -- "whether the legal norms allegedly violated by the

Appellees argue, "the district court never made any sort of final ruling." (Appellees' Br. at 3.)

Whatever the technical merits of this argument, it is

under the facts alleged by Appellees, Moffett and Minguzzi have violated Appellees' clearly established constitutional rights.

commencement of discovery."[8] Id. (emphasis added); see also

Saucier v. Katz, 533 U.S. 194, 201 (2001), overruled on other grounds by Pearson v. Callahan, 129 S. Ct. 808 (2009) ("[W]e repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation." (internal citation and quotations omitted)); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) ("Until this threshold immunity question is resolved, discovery should not be allowed."); cf. Johnson v. Jones, 515 U.S. 304, 313 (1995) (limiting Mitchell to allow only qualified immunity appeals that are based on a claim that the judge, taking the facts as given, erred as a matter of law in finding a violation of clearly established law); Winfield v. Bass, 106 F.3d 525, 529-30 (4th Cir. 1997) (en banc) (same).

[8] Appellees observe that, even if qualified immunity

Several of our sister circuits have found that similar deferrals of decision on an immunity claim were immediately appealable. In X-Men Security, Inc. v. Pataki, 196 F.3d 56, 64, 67 (2d Cir. 1999), for example, the Second Circuit determined that it had jurisdiction to review a district court's rejection

defendant's motion to dismiss on qualified immunity grounds); Valiente v. Rivera, 966 F.2d 21, 23 (1st Cir. 1992) (finding immediately appealable a district court's refusal to entertain a

qualified immunity claim on summary judgment); Smith v. Reagan, 841 F.2d 28, 31 (2d Cir. 1988) ("By holding the decision [on the State's Eleventh Amendment immunity motion] in abeyance pending the completion of all discovery in the case, the district court effectively denied that right.").

Here the district court plainly decided that, as a matter

of law, Moffett and Minguzzi's alleged conduct violated Appellees' clearly established constitutional rights. The fact that this decision was made in the context of placing Moffett and Minguzzi's motion for summary judgment in abeyance does not place it outside the realm of the collateral order doctrine. We

physically restrained in her wheelchair for hours at a time. We agree inasmuch as the facts alleged by Appellees create a

reasonable inference that the Appellants' conduct was motivated by malice.

We have long recognized that "'[liberty] from bodily restraint . . . [lies at] the core of the liberty protected by the Due Process Clause [of the Fourteenth Amendment].'" Youngberg v. Romeo, 457 U.S. 307, 316 (1982) (quoting Greenholtz

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concurring in part and dissenting in part)). Because restraint cases require us to balance an individual's liberty interest against a state interest in using the restraint, "[t]he question . . . is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint

safely in her chair without the use of some sort of restraint.[9] Furthermore, during the course of a normal school day, H.H. would often need to be seated while being instructed. However,

meaning that she could neither report nor reject the Appellants' conduct.

Where the use of a restraint is "so inspired by malice . . . that it amount[s] to a brutal and inhumane abuse of official power literally shocking to the conscience," we cannot but find that it violates an individual's substantive due process rights. Hall v. Tawney, 621 F.2d 607, 613 (4th Cir. 1980) (emphasis added). Here, if Moffett and Minguzzi were physically restraining H.H. for hours on end, and using that time to verbally abuse her and strategize against her—that behavior certainly shocks the conscience. In such circumstances, we also must conclude that Appellants violated clearly established law, as a reasonable teacher would plainly recognize that maliciously restraining a child for long periods of time was unlawful. See Jefferson v. Ysleta Independent School District, 817 F.2d 303 (5th Cir. 1987) (affirming denial of qualified immunity where teacher tied an eight-year-old child to her chair with a jump rope for almost two full school days); cf. Heidemann v. Rother, 84 F.3d 1021, 1029 (8th Cir. 1996) (granting qualified immunity where teachers used a blanket

holds that a teacher, who straps a disabled child in her

right to be free from restraint." (Diss. Op. at 1-2). Yet we need not identify a case that is "factually on all-fours" in order to find that a clearly established right has been violated. Jefferson, 817 F.2d at 305; see also Hope v. Pelzer, 536 U.S. 730, 739 (2002). Rather, "[f]or a constitutional right

of a restraint, her actions will not be protected by qualified immunity when they amount to an "abuse of official power literally shocking to the conscience." Hall, 621 F.2d at 613.

The Eighth Circuit's decision in Heidemann is not to the

teachers received qualified immunity for their use of a blanket restraint because the court found that the restraint was employed at the advice of a licensed physical therapist under contract with the school. Heidemann, 84 F.3d at 1029. The

IV.

This appeal came to us as a challenge to the district

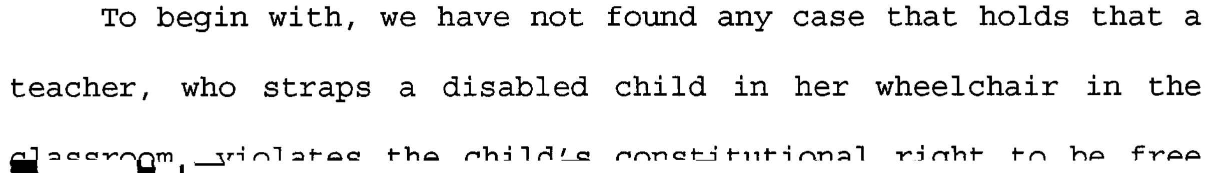
continuance, and deny the Appellants' motion for a protective

NIEMEYER, Circuit Judge, dissenting:

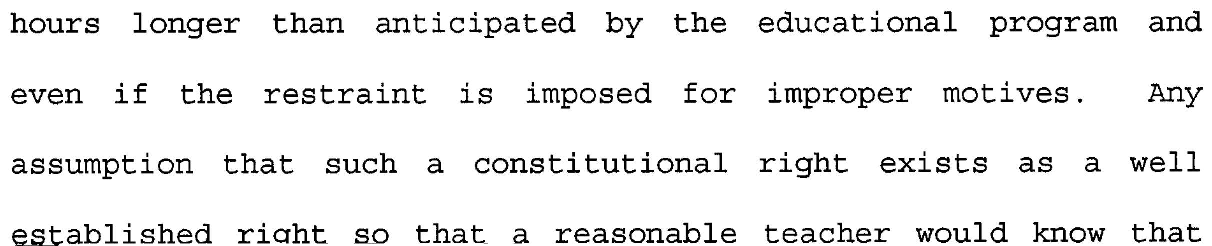
H.H., a severely disabled seven-year old girl -- she can neither walk nor talk -- and her mother commenced this action against two public school teachers for strapping H.H. into a

into the chair was necessary to enable her to sit up in her chair. As the majority notes, "It is undisputed that, because of her disability, H.H. could not be seated safely in her chair without the use of some sort of restraint." While the

To begin with, we have not found any case that holds that a teacher, who straps a disabled child in her wheelchair in the classroom, violates the child's constitutional right to be free



hours longer than anticipated by the educational program and even if the restraint is imposed for improper motives. Any assumption that such a constitutional right exists as a well established right so that a reasonable teacher would know that



the procedure, the child was bound with a blanket so that she could not use her arms, legs, or hands for hours at a time. Despite the fact that the plaintiff alleged that the "blanket wrapping was used as a means of physical restraint . . . [and] that it was administered as a substitute for educational and

habilitative programming merely for defendants' convenience," id. at 1026, the Eighth Circuit held that the teachers' conduct did not amount to a constitutional violation and that the teachers were entitled to qualified immunity. The court concluded that "even if the blanket wrapping treatment did

wheelchair for hours at a time."

On the record in this case, however, I simply cannot understand how one can contend that the physical restraint of H.H. was "purposeless." The lap belt on H.H.'s chair had a very clear purpose, as her mother recognized, because H.H. could not

when similarly situated non-disabled children do not have such a right.

By denying the teachers in this case qualified immunity, the majority seems to insist (1) that the teachers should have knowledge of some constitutional right that has not yet been defined by the Supreme Court or by the Fourth Circuit, and (2)

conduct, even if improperly motivated, violated H.H.'s constitutional rights. The closest they come is a single, factually distinguishable case out of the Fifth Circuit, in

her even to use the restroom. See Jefferson v. Ysleta Indep. Sch. Dist., 817 F.2d 303, 304-5 (5th Cir. 1987). Of course, the