2019 WL 4121023
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United States Court of Appeals, Sixth Circuit.

Luke WAID, Parent and Next-Friend of SR, a minor, et al., Plaintiffs,
Elnora Carthan, et al., on behalf of themselves and all others similarly situated, Plaintiffs-Appellees,
v.
Rick SNYDER, Governor, in his individual and official capacities, et al., Defendants-Appellants,
Dayne Walling, et al., Defendants.

Nos. 18-1960, 18-1967; 18-1970; 18-1983; 18-1999; 18-2386; 18-2395; 18-2416; 18-2426
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Attorneys and Law Firms

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Before: MOORE, GILMAN, and DONALD, Circuit Judges.

ORDER

***1** These nine related appeals are from two orders entered in this consolidated, putative class action arising from the Flint water crisis. The first order, entered on August 1, 2018, granted in part and denied in part motions to dismiss based on qualified immunity and other grounds. The second order, entered on November 9, 2018, vacated the August 1 order, denied as moot a motion for reconsideration, and deferred ruling on a motion for leave to file an amended complaint. The Plaintiffs-Appellees move to dismiss the appeals; the Defendants-Appellants oppose the motions to dismiss; and the Appellees reply in support.

The Appellees assert that because the August 1 order has been vacated, the appeals from that order must be dismissed as moot. The Appellants argue that the district court lacked jurisdiction to vacate the August 1 order because it was on appeal to this court. Two timely motions for reconsideration of the August 1 order were filed in the district court. Thus, jurisdiction did not immediately transfer to this court, and the appeals from the August 1 order were held in abeyance. *See* Fed. R. App. P. 4(a)(4)(B)(i) (providing that if time-tolling motions are filed, the notice of appeal becomes effective only when the order disposing of the last such motion is entered). One of the motions for reconsideration was withdrawn several hours before the district court entered the November 9 order. The second motion, which sought reconsideration under E.D. Mich. Local Rule 7.1(h), remained pending.

Motions for reconsideration generally are construed as motions to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). "Motions for reconsideration of a judgment are construed as motions to alter or amend the judgment and are time tolling for the purposes of Rule 4(a)(4)." *Moody v. Pepsi-Cola Metro. Bottling Co.*, 915 F.2d 201, 206 (6th Cir. 1990). In *In re Greektown Holdings, LLC*, 728 F.3d 567, 574 (6th Cir. 2013), we held that the ruling on a motion for reconsideration filed under Local Rule 7.1(h) should be reviewed under the standard set forth in the local rule. But *Greektown Holdings* does not address whether a motion for reconsideration filed under Local Rule 7.1(h) is a time-tolling motion under Rule 4(a)(4). And *Moody* clearly holds that a motion for reconsideration is a time-tolling motion. Because the district court had not ruled on the pending motion for reconsideration, it retained jurisdiction to enter the November 9 order. *See Slep-Tone Entm't Corp. v. Karaoke Kandy Store, Inc.*, 782 F.3d 712, 716–17 (6th Cir. 2015). And, while the district court retains jurisdiction, it may amend its prior ruling in ways not requested by a pending motion for reconsideration. *EEOC v. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus.*, 235 F.3d 244, 250 (6th Cir. 2000), *on reh'g in part*, 249 F.3d 1085 (6th Cir. 2001).

The Appellees move to dismiss the appeals from the November 9 order for lack of a final, appealable order. Generally, the circuit court has jurisdiction over appeals from final judgments of the district court. 28 U.S.C. § 1291. A final judgment ends the litigation on the merits.

Catlin v. United States, 324 U.S. 229, 233 (1945). "[W]here an order merely vacates a judgment and leaves the case pending for further determination, [the circuit court] generally deem[s] the order non-final and therefore unappealable." *Doyle v. Mut. of Omaha Ins. Co.*, 504 F. App'x 380, 381 (6th Cir. 2012). The November 9 order is not a final order resolving all the issues in the action.

***2** The Appellants argue, however, that the November 9 order is immediately appealable because the district court lacked the authority to sua sponte vacate the August 1 order under Federal Rule of Civil Procedure 60(b)(6) and improperly construed the Plaintiffs' motion for leave to amend as seeking relief under Rule 60(b). Regardless of whether the district court properly relied on Rule 60(b)(6) in vacating the August 1 order, the August 1 order was an interlocutory ruling and not a final judgment. The district court had inherent authority to reconsider its prior, interlocutory order. *See In re Saffady*, 524 F.3d 799, 802–03 (6th Cir. 2008). "District courts have inherent power to reconsider interlocutory orders and reopen any part of a case before entry of a final judgment." *Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991). Thus, the district court did not exceed its authority in vacating the August 1 order.

And the November 9 order vacating the August 1 order is not appealable as an implicit denial of qualified immunity. The district court has indicated its intent to expeditiously address qualified immunity, considering the additional claims proposed in the amended complaint and this court's recent decision in *Guertin v. State*, —— F.3d ——, 2019 WL 99088 (6th Cir. Jan. 4, 2019). Finally, the November 9 order is not appealable under either 28 U.S.C. § 1292(b) or Federal Rule of Civil Procedure 54(b) because the district court has not certified its ruling for an immediate appeal.

Accordingly, the motions to dismiss are **GRANTED.**

All Citations

Not Reported in Fed. Rptr., 2019 WL 4121023