

United States Court of Appeals
For the Eighth Circuit

No. 22-3292

Kameron Evans; Noah Evans

Plaintiffs - Appellees

v.

Cabot School District; Tony Thurman, Superintendent; Henry Hawkins, Principal

Defendants - Appellants

John Dodd, Individually; Brittany Taunton, Individually

Defendants

Appeal from United States District Court
for the Eastern District of Arkansas

Submitted: April 4, 2023

Filed: April 28, 2023

[Unpublished]

Before BENTON, SHEPHERD, and GRASZ, Circuit Judges.

PER CURIAM.

Kameron Evans and Noah Evans sued the Cabot School District, Tony Thurman in his individual capacity, Henry Hawkins in his individual capacity (collectively the “District Defendants”), and others, raising various state and federal claims. The District Defendants appeal the district court’s¹ September 30, 2022 order denying, in part, and granting, in part, their motion for summary judgment; the order denying their motion to amend and certify the September 30 order under 28 U.S.C. § 1292(b) or Federal Rule of Civil Procedure Rule 54(b); and the order posting the redacted version of the September 30 order to the docket. We ordered the parties to brief whether this court has jurisdiction to review these orders.

Having reviewed the parties’ arguments, we conclude that, absent a grant of permission to appeal by the district court, we lack jurisdiction over the District Defendants’ appeal. *See Thomas v. Basham*, 931 F.2d 521, 522–23 (8th Cir. 1991) (noting this court’s obligation to consider jurisdiction sua sponte when it appears to be lacking). Although an interlocutory summary judgment order denying qualified immunity may be appealable in certain circumstances, *see, e.g., K.W.P. v. Kan. City Pub. Schs.*, 931 F.3d 813, 816, 820–21 (8th Cir. 2019), the District Defendants did not seek qualified immunity in their summary judgment motion, *cf. Lee v. Driscoll*, 871 F.3d 581, 584 (8th Cir. 2017) (declining to address qualified immunity argument first raised on appeal); *Ferguson v. Short*, 840 F.3d 508, 511 (8th Cir. 2016) (declining to dismiss appeal when defendants did not “altogether” fail to raise qualified immunity in summary judgment filings). And the denial of summary judgment is generally not otherwise final and appealable. *See* 28 U.S.C. § 1291; *Langford v. Norris*, 614 F.3d 445, 455 (8th Cir. 2010). Because the district court

¹The Honorable Kristine G. Baker, United States District Judge for the Eastern District of Arkansas.

declined to certify an appeal, we therefore lack jurisdiction to review the summary judgment and related orders. *See Langford*, 614 F.3d at 456.

Accordingly, the appeal is dismissed for lack of jurisdiction.
