

Fitzgerald Columbus HINSON, Plaintiff-Appellee,

v.

Roderick E. EDMOND, M.D., Defendant-Appellant.

No. 98-9178.

United States Court of Appeals,

Eleventh Circuit.

March 7, 2000.

Appeal from the United States District Court for the Northern District of Georgia. (No. 97-00431-1-CV-JEC), Julie E. Carnes, Judge.

Before EDMONDSON and BIRCH, Circuit Judges, and OWENS\*, Senior District Judge.

BY THE COURT:

Our opinion in *Fitzgerald Columbus Hinson v. Roderick E. Edmond*, reported at 192 F.3d 1342 is revised as follows:

1. The second sentence of the first paragraph of the opinion is amended to read:

Because we conclude that the defendant, due to his status as a privately employed prison physician, is ineligible to advance the defense of qualified immunity, we AFFIRM the district court's order and REMAND for further proceedings.

2. The final five paragraphs of the opinion, those appearing at pages 1348-49, are withdrawn. We lacked jurisdiction to consider the merits because they are not "inextricably interwoven" with our decision on qualified immunity. *See generally Swint v. Chambers County Comm'n*, 514 U.S. 35, 115 S.Ct. 1203, 1212, 131 L.Ed.2d 60 (1995); *Foy v. Schantz, Schatzman & Aaronson, P.A.*, 108 F.3d 1347, 1350 (11th Cir.1997); *Harris v. Board of Educ.*, 105 F.3d 591, 594 (11th Cir.1997). In the place of the stricken paragraphs, we substitute this paragraph:

We affirm the district court's denial of defendant's motion for summary judgment: the qualified immunity doctrine does not apply. We remand the case for proceedings consistent with this opinion.

AFFIRMED AND REMANDED.

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\*Honorable Wilbur D. Owens, Jr., Senior U.S. District Judge for the Middle District of Georgia, sitting by designation.

