

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13982
Non-Argument Calendar

BORDEAU METALS, LLC,
BB&K HOLDINGS, LLC,

Plaintiffs-Counter Defendants-Appellees,

versus

FLOYD COUNTY, GEORGIA, et al.,

Defendants,

JAMIE MCCORD,

Defendant-Appellant,

DEVELOPMENT AUTHORITY OF FLOYD COUNTY,
GEORGIA,

Counter Claimant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:23-cv-00193-WMR

Before JORDAN, NEWSOM, and WILSON, Circuit Judges.

PER CURIAM:

Jamie McCord appeals the portion of the district court’s order denying him official immunity under Georgia law on the tortious interference claims asserted by Bordeau Metals, LLC and BB&K Holdings, LLC. The court denied summary judgment on immunity grounds to Mr. McCord because it determined that the record raised a genuine dispute of material fact. Because we lack appellate jurisdiction over a denial of official immunity that turns on issues of evidentiary sufficiency, we dismiss this appeal for lack of jurisdiction.

I

The Georgia Power Company contracted with Brandenburg Industrial Service Company to dismantle its newly decommissioned plant—Plant Hammond—in Floyd County, Georgia. Subsequently, Bordeau Metals, LLC, contracted with Brandenburg to purchase the scrap metal generated from Plant Hammond’s demolition. Bordeau bought land from the Floyd County Development Authority to conduct its metal recycling operations.

After Bordeau began processing and recycling Plant Hammond's scrap metal at its new facility, Floyd County residents began lodging noise complaints to the County Board of Commissioners. The Floyd County Manager, Mr. McCord, and the Board approached Georgia Power about the noise complaints. Mr. McCord spoke with a Georgia Power representative about relocating Bordeau's operations. Along with representatives from the Board and the local county development authorities, Mr. McCord also conducted two tours of Bordeau's facility and attended a meeting with Georgia Power representatives to discuss the viability of Walker Mountain Landfill as a potential relocation site. Yet Mr. McCord ultimately withdrew Walker Mountain Landfill from Georgia Power's consideration.

A conference call took place between a Georgia Power Executive, Allen Reaves, and several Georgia Power representatives. During the call, Mr. Reaves stated that "the noise" at the Bordeau operations "must stop." On February 3, 2023, Georgia Power directed Brandenburg to cease operations because of "the numerous community concerns Georgia Power has experienced from the Bordeau facility." Six days later, Brandenburg terminated Bordeau's contract to purchase Plant Hammond's scrap metal.

Bordeau and BB&K Holdings, LLC (collectively, "Bordeau") asserted various state-law claims against Floyd County, Rome-Floyd County Development Authority, the Development Authority of Floyd County, and Mr. McCord. As to Mr. McCord, Bordeau

asserted claims against him for tortious interference with contractual and business relations, respondeat superior and agency liability, a violation of O.C.G.A. § 36-33 4. Bordeau also sought attorneys' fees and expenses under O.C.G.A. § 13-6-11.

The parties filed multiple motions for summary judgment. The district court held a hearing on the motions and, as relevant to this appeal, denied Mr. McCord's motion for summary judgment on official immunity grounds as to Bordeau's tortious interference claims. Specifically, the court determined that the facts surrounding Mr. McCord's official immunity are "hotly disputed" and precluded summary judgment. For example, with respect to the issue of malice, the court noted that "a reasonable jury could find malice if they determine that [Mr.] McCord intentionally and wrongfully harmed Bordeau's contractual and business relations to mitigate the noise complaints." This appeal followed.

II

We review *de novo* a district court's denial of summary judgment based on official immunity. *See Hoyt v. Cooks*, 672 F.3d 972, 981 (11th Cir. 2012). We also review *de novo* our appellate jurisdiction. *See Positano Place at Naples I Condo. Ass'n, Inc. v. Empire Indem. Ins.*, 84 F.4th 1241, 1247 (11th Cir. 2023).

III

On appeal, Mr. McCord argues that the district court erred in denying him official immunity from Bordeau's tortious interference claims because there is no evidence that he acted with actual

25-13982

Opinion of the Court

5

malice. Bordeau responds by defending the court’s ruling and asserting that we have no jurisdiction because, at its core, Mr. McCord’s appeal is only a dispute about the sufficiency of the evidence. Bordeau is, we think, correct with respect to jurisdiction.

Under 28 U.S.C. § 1291, we have jurisdiction to review “final decisions of the district courts.” Generally, a final decision terminates the litigation. See *Howell v. Schweiker*, 699 F.2d 524, 528 (11th Cir. 1983). Even so, the Supreme Court has held that an order that does not end the litigation is “final” if it fits in “that small class [of orders] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

To that end, “[o]fficials ‘may immediately appeal an order denying . . . official immunity, provided that the applicable state law defines the immunity at issue as one from suit instead of from just liability.’” *English v. City of Gainesville*, 75 F.4th 1151, 1156–57 (11th Cir. 2023) (quoting *Jones v. Fransen*, 857 F.3d 843, 849 (11th Cir. 2017)). Because Georgia law defines its official immunity as immunity from suit, see GA. CONST. art. I, § II ¶ IX(d), we ordinarily have jurisdiction to review a denial of official immunity under Georgia law. See *English*, 75 F.4th at 1157.

Still, our interlocutory jurisdiction to review the denial of summary judgment on official immunity, like qualified immunity,

hinges on the type of issues involved in the appeal. *See id.* at 1155. For example, “we do not have interlocutory jurisdiction to review the denial of summary judgment where the *only* issues appealed are *evidentiary sufficiency issues*[,]” but we do “have interlocutory jurisdiction over *legal issues* that are the basis for a denial of summary judgment on [state-law] immunity grounds.” *Cottrell v. Caldwell*, 85 F.3d 1480, 1484 (11th Cir. 1996) (emphasis added). *See also English*, 75 F.4th at 1157 (“But as in the qualified immunity context, we lack interlocutory appellate jurisdiction over the denial of summary judgment based on state-law immunity where the appeal turns on issues of evidentiary sufficiency.”).¹

Therefore, to determine whether we have interlocutory jurisdiction to review the district court’s denial of summary judgment on official immunity, we must first determine the nature of Mr. McCord’s appeal.

Under the Georgia Constitution, Mr. McCord may be personally liable only for ministerial acts performed negligently or discretionary acts performed with malice or an intent to injure. *See Cameron v. Lang*, 549 S.E.2d 341, 344 (Ga. 2001). *See also* GA. CONST. art. I, § II ¶ IX(d) (“[A]ll officers and employees of the state or its departments and agencies may be subject to suit . . . and may

¹ If both evidentiary sufficiency and legal issues are raised, we “may choose to conduct our own factual analysis either because the district court did not adequately identify the facts or because ‘such a determination is part of the core [] immunity analysis.’” *Stanley v. City of Dalton, Ga.*, 219 F.3d 1280, 1287 (2000) (quoting *Johnson v. Clifton*, 74 F.3d 1087, 1091 (1996)).

be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions.”). It is undisputed that Mr. McCord was performing discretionary functions. Thus, the only question for immunity purposes is whether he acted “with actual malice or with actual intent to cause injury in the performance of [his] official functions.” *Gilbert v. Richardson*, 452 S.E.2d 476, 483 (Ga. 1994).

In the official immunity context, “actual malice” means “‘express malice,’ i.e., a deliberate intention to do wrong, and does not include ‘implied malice,’ i.e., the reckless disregard for the rights or safety of others.” *Murphy v. Bajjani*, 647 S.E.2d 54, 60 (Ga. 2007) (quotations omitted). “[A] jury can infer actual malice based on an offic[ial’s] conduct[,]” but “unreasonable” or “recklessly illegal conduct does not support an inference of actual malice.” *Black v. Wiginton*, 811 F.3d 1259, 1266 (11th Cir. 2016). The requisite intent for a showing of actual malice “must be the intent to cause the harm suffered by the plaintiffs.” *Murphy*, 647 S.E.2d at 60.

Bordeau offers several pieces of evidence to support the allegations of actual malice. It claims Mr. McCord took “personal actions” to terminate its operations such as “proceed[ing] with attempts to relocate the . . . operations, despite never being authorized to do so,” and “interfer[ring] with the [p]laintiffs’ contractual and business relationships.” D.E. 176 at 19. Specifically, Mr. McCord, on behalf of the Board, “knowingly acted to pressure Georgia Power” into terminating the contract between Bordeaux and Brandenburg. *Id.* at 9. Mr. McCord did this by contacting

Georgia Power to set up meetings, making Georgia Power aware that the noise issue was a matter of public concern for both the neighbors and the Board, arranging a tour of Plant Hammond, proposing relocation options, and withdrawing an alternative site option for Georgia Power's consideration—which immediately preceded Georgia Power's decision to direct Brandenburg to send scrap metal to an alternative site. *See id.* at 10–11. Mr. McCord, for his part, disputes initiating the contact with Georgia Power officials, arranging a tour of Plant, and proposing multiple relocation options. *See* D.E. 178 at 4.

Based on this record, we conclude that Mr. McCord's appeal only raises issues of evidentiary sufficiency. After an almost three-hour hearing, the district court denied Mr. McCord's motion for summary judgment based on official immunity. *See generally* D.E. 186 at 11. *See also* D.E. 191 at 97:20–25 (“I think a reasonable juror likely could conclude that Mr. McCord was . . . involved in pressuring Georgia Power to do whatever it took to end its Bordeaux problem, which evolved into Georgia Power taking a very aggressive position, instructing its contractor to cut off a subcontractor.”). The court explained that the “facts are hotly disputed” and determined it was “possible that a reasonable jury could find malice if they determined that [Mr.] McCord intentionally and wrongfully harmed Bordeaux's contractual and business relations to mitigate the noise complaints.” D.E. 186 at 10–11. Put simply, “the district court ruled against [Mr. McCord] because of a genuine dispute of material fact.” *English*, 75 F.4th at 1156. “This is the type of ruling that we lack jurisdiction to review.” *Id.*

25-13982

Opinion of the Court

9

In short, the dispute in this appeal “is about what the evidence could prove at trial; it is not a dispute about principles of law.” *Id.* Mr. McCord does not argue that he would not be entitled to official immunity if, as the district court determined a reasonable jury could find that, he acted with actual malice by exerting pressure on Georgia Power to terminate the Bordeaux contracts. Instead, Mr. McCord argues that he is entitled to official immunity because the *facts* show that he did not act with actual malice. Consequently, Mr. McCord’s appeal “is simply an argument about the factual inferences the district court drew from a series of circumstances.” *Hall v. Flourney*, 975 F.3d 1269, 1278 (11th Cir. 2020). Even if we disagree with the court’s inferences, “review[ing] that determination now would amount to nothing more than weighing the evidence supporting the district court’s summary judgment determination, which is precisely what the Supreme Court has said we cannot do at this interlocutory stage.” *Id.*

IV

We **DISMISS** the appeal for lack of jurisdiction.

APPEAL DISMISSED.