Vermont Superior Court
Filed 09/29/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 26-CV-00023

Diane Williams, et al v. State of Vermont Agency of Transportation, et al

ENTRY REGARDING MOTION

Title: Motion; Motion for Leave to Appeal Interlocutory Order; for Entry of Final Judgment (Motion: 9; 10)
Filer: Sean P. Noonan; Thomas M. Higgins
Filed Date: July 13, 2026; July 28, 2026

The motion is GRANTED IN PART and DENIED IN PART.

This is a tort case arising out of a workplace injury. Following the injury, and despite the statutory exclusivity provisions of the Workers Compensation Act, Plaintiff Mr. Williams sued the State, several different agency employees, the co-employee (Mr. Lynds) who allegedly caused the injury, and the Vermont State Employees Association and one of its employees. The State defendants and the VSEA defendants filed Rule 12(b)(6) motions to dismiss, which the Court largely granted on June 29, 2026. The effect of the June 29th decision is that the case will proceed beyond the pleading stage against co-employee Lynds only; Plaintiffs also were given 30 days to file a motion to amend should they wish to pursue their UM/UIM claim against the State. To date, no such motion has been filed.

In response, Plaintiffs have sought immediate appeal under V.R.A.P. 5.1 (collateral final order review) and, alternatively, V.R.A.P. 5(b) (permissive interlocutory review). All defendants oppose review under V.R.A.P. 5.1 and 5(b), and the VSEA defendants separately request the entry of partial final judgment, V.R.C.P. 54(b), as to the claims against them, which Plaintiffs oppose. The Court will address VSEA's motion for partial final judgment and then address Plaintiff's arguments in the alternative for immediate interlocutory appeal.

1. *Partial final judgment in favor of the VSEA defendants*

"[T]here are three prerequisites to directing an entry of judgment under V.R.C.P. 54(b): (1) there must be multiple parties or multiple claims for relief, (2) at least one claim or the rights

and liabilities of at least one party must be finally decided, and (3) the court must find that there is no just cause for delaying the appeal." *Kelly v. Lord*, 173 Vt. 21, 31 (2001).

There are multiple parties and claims for relief in this case, and the dismissal decision conclusively resolves all claims against the VSEA defendants in their favor. They have no remaining role in this case.

The rationale of the dismissal decision as to them is simple: they had no material connection to Mr. Williams' injury that could possibly lead to liability no matter which negligence theory or compensatory scheme the Court adopted.

The VSEA defendants and the allegations against them are not interwoven into the claims against the State defendants either directly or in some manner that might counsel against entering judgment in their favor now. Appellate review of that decision, should Plaintiffs seek it, will not risk causing the Supreme Court to unnecessarily review the same legal issues and facts multiple times. Conversely, if Rule 54(b) relief is not granted, the VSEA defendants will remain involved, potentially for a long time and at their own expense, with no appreciable benefit anyone. Conversely, the scope of the dismissal as to them is extremely limited and any appeal of that decision presumably would be as well.

Therefore, there is no just cause for delaying entry of partial final judgment for the VSEA defendants, which the Court will enter promptly. *Kelly*, 173 Vt. at 31. The motion for partial final judgment is **Granted.** In doing so, Plaintiff's request for immediate review of the Court's decision regarding the VSEA defendants becomes **Moot**, as Plaintiff may take that appeal regarding the VSEA without further leaver or permission of the Court based on the final judgment that shall issue concurrent to this decision.

2. *Collateral final order review regarding the State defendants*

As to the motion for interlocutory appeal, Plaintiff has made two arguments. First, he seeks a ruling that the Court's June 29th is a final order from which he may seek review and appeal under V.R.A.P. 5.1(a). Collateral final order review may be permitted where an order "(A) conclusively determines a disputed question; (B) resolves an important issue completely separate from the merits of the action; and (C) will be effectively unreviewable on appeal from a final judgment." V.R.A.P. 5.1(a)(1); see also *In re J.G.*, 160 Vt. 250, 252 (1993) (noting the

discretionary nature of whether a party may take an appeal from a collateral final order)

Under this framework, the Court finds Plaintiff's motion to be unpersuasive. The June 29th dismissal decision resolves nothing that is completely separate from the merits and that will be effectively unreviewable on appeal from the final judgment. While the Order does effectively remove certain liability claims against the State, it does not remove the State as a party or prevent appellate review in the future as this motion.

Plaintiffs' motion is **Denied** as to V.R.A.P. 5.1 collateral final order review.

3. *Permissive interlocutory review regarding the State defendants*

Plaintiff's second argument seeks permissive interlocutory appeal under Appellate Rule 5(b)(1). This provision allows the court to permit an immediate appeal of an interlocutory order if the Court concludes that the order: (1) involves a controlling question of law (2) about which there exists substantial ground for difference of opinion, and (3) an immediate appeal may materially advance the termination of the litigation. V.R.A.P. 5(b)(1). "The three factors should be viewed together as the statutory language equivalent of a direction to consider the probable gains and losses of immediate appeal." 16 Wright & Miller et al., Fed. Prac. & Proc. Juris. § 3930 (3d ed.). In making that assessment, the Court recognizes that permissive interlocutory review is a very limited exception to the "well-established policy of avoiding piecemeal appeals." *Castle v. Sherburne Corp*., 141 Vt. 157, 162 (1982); see also *In re Pyramid Co. of Burlington*, 141 Vt. 294, 300 (1982).

Plaintiffs principally seek to challenge on immediate review the Court's conclusion as to the applicability of *Kittell v. Vermont Weatherboard, Inc*., 138 Vt. 439 (1980) (per curiam), and as to the lack of co-employee liability for managerial employees exercising their employer's nondelegable duty to provide a safe workplace. Plaintiffs disagree with these rulings and wish to argue for a change in the law. They object that if they can secure more favorable rulings from the Supreme Court now, this case will unfold in a much more efficient manner for them and avoid the prospect of a second trial after the Supreme Court corrects the trial court's errors.

This case is not appropriate for interlocutory review. Litigants frequently disagree with interlocutory rulings and would prefer different outcomes sooner rather than later. Plaintiffs' motion does not distinguish this case from the lion's share of those cases to which the rule

against piecemeal litigation properly applies despite the nominal showing required by V.R.A.P. 5(b).

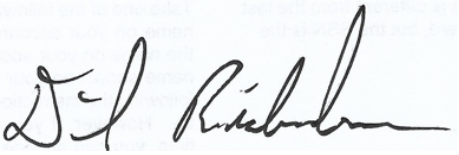
The effect of immediate appeal in this case would be highly uncertain. The decision at issue is a determination at the pleading stage under Rule 12(b)(6). If the Supreme Court were to accept interlocutory review, there is no guarantee that the Court would resolve any properly presented questions in the manner, either way, that Plaintiffs think it might. In other words, there is no reliable prospect that the isolated legal issues would reach some final resolution.

In short, this is not the sort of case where interlocutory review would be provident. Plaintiffs' motion is **Denied** as to V.R.A.P. 5(b) interlocutory review.

ORDER

For the foregoing reasons, the VSEA defendants' motion for partial final judgment is **Granted**. Plaintiffs' motion for an immediate and interlocutory appeal is **Denied**.

Electronically signed on 9/28/2026 7:09 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge