

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 98-4130

Wendell R. Ayers,

Appellee,

v.

Willis Sargent, Warden, Jefferson
County Correctional Facility, Arkansas
Department of Correction,

Defendant,

Tracy Spadoni, (Originally sued as
Spadoni),

Appellant.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

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

[UNPUBLISHED]

Submitted: March 22, 2000
Filed: March 24, 2000

Before BEAM, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

Tracy Spadoni appeals from the district court's¹ interlocutory order denying her motion for summary judgment based on qualified immunity in this failure-to-protect action brought by Arkansas inmate Wendell R. Ayers.

Ayers was injured by another inmate after no one acceded to his request for a transfer made after he had been threatened by that inmate. In support of her motion for summary judgment, Spadoni argued, while acknowledging her awareness that Ayers had been threatened and had requested a transfer, she was entitled to qualified immunity because Ayers failed to allege anything more than negligence on her part and because she lacked authority to transfer him. Ayers responded, in part, that he had asked for a transfer to a safe place through Spadoni and that she promised to "take care of it" but never did. The district court found a genuine fact issue remained as to whether Spadoni had been deliberately indifferent to Ayers's safety and denied summary judgment. We conclude Spadoni cannot obtain interlocutory appellate review of this kind of "fact-related dispute about the pretrial record." See Johnson v. Jones, 515 U.S. 304, 307, 316 (1995) (noting existence or nonexistence of triable issue of fact is issue that trial judges, not appellate judges, confront almost daily). Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHT CIRCUIT.

¹The Honorable H. David Young, United States Magistrate Judge for the Eastern District of Arkansas, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).