

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

C. ALAN POWELL, TORY
DUNLAP, LEE ANTONIO
SMITH, and DAVID EVANS,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

JACQUELINE BARRETT,
individually and in her Official
Capacity, FULTON COUNTY,
KAREN HANDEL, Chairperson,
Fulton County Board of
Commissioners, ROB PITTS,
Member, Fulton County Board of
Commissioners, EMMA I.
DARNELL, Member, Fulton
County Board of Commissioners,
NANCY A. BOXILL, Member,
Fulton County Board of
Commissioners, WILLIAM
“BILL” EDWARDS, Member,
Fulton County Board of
Commissioners, and CITY OF
ATLANTA,

Defendants.

CIVIL ACTION NO.
1:04-CV-1100-RWS

ORDER

In a decision dated August 15, 2005, this Court certified several previously entered orders in this case for interlocutory appeal, and stayed this action pending resolution of the parties' appeal and cross-appeal. (See Aug. 15, 2005 Order [142] at 2-3.) The same day, Defendants Barrett and Freeman filed a motion to dismiss, complaining that they had not been timely served with certain amendments to Plaintiffs' Complaint. (See Def.s' Mot. to Dismiss [141].)

Although this Court arguably has jurisdiction to resolve Defendants' Motion to Dismiss, see Green Leaf Nursery v. E. I. DuPont De Nemours & Co., 341 F.3d 1292, 1309 (11th Cir. 2003) (" 'The district court has authority to proceed forward with portions of the case not related to the claims on appeal . . . ' ") (quoting May v. Sheahan, 226 F.3d 876, 880 n. 2 (7th Cir. 2000)); Taylor v. Sterrett, 640 F.2d 663, 667-68 (5th Cir. Unit A Mar. 1981) ("where an appeal is allowed from an interlocutory order, the district court may still proceed with matters not involved in the appeal");¹ it is not inclined to lift the previously

¹ The U.S. Court of Appeals for the Eleventh Circuit adopted as binding precedent the decisions of the U.S. Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981).

entered stay to address Defendants' Motion, nor to require Plaintiffs to respond to the motion while they continue to pursue this litigation before the Eleventh Circuit. Consequently, Defendants Barrett and Freeman's Motion to Dismiss [141] is **DENIED with the right to re-file**. To the extent they wish to raise the issues asserted therein following the Eleventh Circuit's resolution of the pending appeal and cross-appeal, they may do so at a later date.

SO ORDERED this 7th day of March, 2006.

/s/ Richard W. Story
RICHARD W. STORY
UNITED STATES DISTRICT JUDGE