

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

L. B., individually and on behalf of
D.B., a minor,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA;
BUREAU OF INDIAN AFFAIRS; DANA
BULLCOMING, agent of the Bureau of
Indian Affairs sued in his individual
capacity,
Defendants-Appellees.

No. 20-35514

D.C. No.
1:18-cv-00074-
SPW

ORDER

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Argued and Submitted May 6, 2021
Submission Vacated August 6, 2021
Resubmitted September 15, 2022
Seattle, Washington

Filed September 23, 2022

Before: Mary H. Murguia, Chief Judge, and Danny J. Boggs* and Marsha S. Berzon, Circuit Judges.

Order

SUMMARY**

Montana Law

The panel reversed the district court's summary judgment in light of the Montana Supreme Court's response to this court's certification order, and remanded to the district court for further proceedings pursuant to *L.B. v. United States*, 2022 MT 166 ¶ 26, __ P.3d __ (holding that the question whether Officer Bullcoming was acting outside the scope of his employment when he sexually assaulted L.B. is one for a trier of fact).

COUNSEL

Timothy M. Bechtold (argued), Bechtold Law Firm PLLC, Missoula, Montana; John Heenan, Heenan & Cook, Billings, Montana; for Plaintiff-Appellant.

Timothy A. Tatarka (argued), Assistant United States Attorney; Kurt G. Alme, United States Attorney; United

* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

States Attorney's Office, Billings, Montana; for Defendants-Appellees.

ORDER

In light of the Montana Supreme Court's August 16, 2022, opinion in response to this Court's August 6, 2021, certification order, this case is reversed and remanded to the district court for further proceedings. *See L.B. v. United States*, 2022 MT 166, ¶ 26, ___ P.3d ___ ("The certified facts establish that Officer Bullcoming was not, as a matter of law, acting outside the scope of his employment when he sexually assaulted L.B. and the question is one for a trier of fact.").

Appellee's motion for leave to file supplemental briefing is **DENIED** (Doc. 46).

A copy of this order shall serve as the mandate of this court.

REVERSED AND REMANDED.