

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 29, 2013

Elisabeth A. Shumaker
Clerk of Court

RICHARD PERKINS; RICHARD
MILLER,

Plaintiffs - Appellees,

v.

FEDERAL FRUIT AND PRODUCE
COMPANY, INC.; MICHAEL
MARTELLI,

Defendants - Appellants.

No. 13-1250
(D.C. No. 1:11-CV-00542-JAP-KLM)

ORDER

Before **LUCERO, HARTZ, and TYMKOVICH**, Circuit Judges.

The defendants appeal from three post-judgment orders entered by the district court. The plaintiffs filed a motion to dismiss the appeal for lack of jurisdiction. The defendants filed a response arguing that this court has jurisdiction. The plaintiffs filed a reply. Upon consideration of the parties' submissions, the record, and the applicable law, we conclude that this court does not have jurisdiction to consider the defendants' appeal at this time.

The first post-judgment order being appealed denied the defendants' motion for judgment as a matter of law. The second order granted in part and denied in part the defendants' motion for reconsideration, which granted a new trial on certain parts of the

plaintiffs' case. The third order granted in part and denied without prejudice in part the defendants' motion for remittitur, directing that additional proceedings were required. An amended judgment was entered to reflect its rulings on the defendants' post-judgment motions. But, as noted above, the district court has ordered a new trial on liability and damages on specific aspects of the plaintiffs' case. And in one of the post-judgment orders, the district court expressly anticipated entry of a second amended judgment after the further proceedings.

Except in certain situations not applicable here, this court only has jurisdiction to review final decisions of district courts. 28 U.S.C. § 1291. A final decision is one that fully terminates all matters as to all parties and causes of action and leaves nothing for the district court to do but execute the judgment. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996); *Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1541 (10th Cir. 1996). In other words, a final decision exists where the district court "disassociates itself from a case." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995).

In this case, the district court granted the defendants' request for a new trial on portions of the plaintiffs' case. This court has long held that an order granting a new trial is not an appealable final decision. *Delano v. Kitch*, 663 F.2d 990, 1001 (10th Cir. 1981); *Kanatser v. Chrysler Corp.*, 195 F.2d 104, 105 (10th Cir. 1952). Such orders are not final because an order entered pursuant to Rule 59(e) or 60(b) reopens a judgment and "ensures that litigation will continue in the district court." *Stubblefield v. Windsor Capital Group*, 74 F.3d 990, 996 (10th Cir. 1994). The district court has not

disassociated itself from the case through its post-judgment orders. To the contrary, the district court reopened the proceedings, which are anticipated to continue at least through a new trial. Nothing is settled in this case “with finality except the fact that more litigation is on the way.” *McClendon v. City of Albuquerque*, 630 F.3d 1288, 1294 (10th Cir. 2011).

Because no final decision exists here that confers jurisdiction to this court, the plaintiffs’ motion to dismiss is granted.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk