

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

Jeanne Lyliane Gbete v. Sampson Bladen Oil Company, Inc. d/b/a/
Han-Dee Hugo's

No. 5:23-CV-355-BO-KS · No. No. 5:23-CV-355-BO-KS · Decided April 1, 2026

SUMMARY

The United States District Court for the Eastern District of North Carolina denies the defendant’s motion to certify for interlocutory appeal an order granting conditional certification of an FLSA collective action. The court concludes that the proposed appeal would not involve a controlling question of law because the litigation would continue regardless of how the Fourth Circuit resolved the issue.

CASE DETAILS

COURT	United States District Court for the Eastern District of North Carolina
WRITING FOR THE COURT	Terrence W. Boyle
JURISDICTION	United States District Court for the Eastern District of North Carolina
DECIDED	April 1, 2026
DOCKET	No. 5:23-CV-355-BO-KS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under 28 U.S.C. § 1292(b) to certify for interlocutory appeal the portion of the court's prior order granting plaintiff's motion for conditional certification under the Fair Labor Standards Act.
STANDARD OF REVIEW	Interlocutory appeal certification under 28 U.S.C. § 1292(b) is strictly construed and rests within the district court's discretion, even when the statutory requirements are satisfied.
PRECEDENTIAL VALUE	Unpublished district court order; generally nonprecedential.

TOPICS

- interlocutory appeal
- appellate procedure
- civil procedure
- flsa

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court's order applying a two-step conditional-certification approach under the FLSA involved a controlling question of law warranting interlocutory appeal under 28 U.S.C. § 1292(b).
2. Whether immediate appellate review would materially advance the ultimate termination of the litigation.

HOLDINGS

1. Certification was denied because the proposed question concerning the FLSA certification procedure was not a controlling question of law: regardless of how the question were resolved, the litigation would continue.
2. The defendant failed to establish exceptional circumstances warranting departure from the general policy against piecemeal appeals.

KEY QUOTATIONS

“Courts may certify interlocutory orders for appeal when they “involve[] a controlling question of law as to which there is substantial ground for difference of opinion and... an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]””

“A controlling question of law is “a narrow question of pure law whose resolution will be completely dispositive of the litigation, either as a legal or practical matter, whichever way it goes.””

“A controlling issue of law must dispose of the litigation no matter how it is resolved, and ‘a question of law would not be controlling if the litigation would necessarily continue regardless of how that question were decided.’”

FACTUAL BACKGROUND

The action is an FLSA collective action brought by Jeanne Lyliane Gbete on behalf of herself and others similarly situated against Sampson Bladen Oil Company, Inc. The court had entered an order granting conditional certification under the FLSA and permitting the action to proceed under a two-step certification approach. Defendant argued that the court should certify for immediate appeal the legal question whether a one-step or two-step certification procedure should apply.

PROCEDURAL HISTORY

The court had previously granted plaintiff's motion for conditional certification under the FLSA using a two-step approach. Defendant sought immediate appellate review of the court's use of that approach. After briefing, the district court denied certification because the proposed appellate issue would not be dispositive of the litigation or even of the FLSA portion of the case.

DISPOSITION

other

CASES CITED

- In re Pisgah Contractors, Inc., 117 F.3d 133, 136-37 (4th Cir. 1997)
- Fannin v. CSX Transp., Inc., 873 F.2d 1438, *5 (4th Cir. 1989) (unpublished)
- United States ex rel. Michaels v. Agape Senior Cmty., Inc., 848 F.3d 330, 341 (4th Cir. 2017)
- Myles v. Laffitte, 881 F.2d 125, 127 (4th Cir. 1989)
- State of N.C. ex rel. Howes v. W.R. Peele, Sr. Trust, 889 F. Supp. 849, 852-53 (E.D.N.C. 1995)
- In re Camp Lejeune Water Litig., No. 7:23-CV-897, 2024 WL 2198651, at *2 (E.D.N.C. May 13, 2024)
- Wyeth v. Sandoz, Inc., 703 F. Supp. 2d 508, 525 (E.D.N.C. 2010)

OPINION

Gbete

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

No. 5:23-CV-355-BO-KS

JEANNE LYLIANE GBETE, on behalf of) herself and all others similarly situated,) Plaintiff, v.
ORDER

SAMPSON BLADEN OIL COMPANY,

INC. d/b/a/ Han-Dee Hugo's,) Defendant. This cause comes before the Court on defendant's motion to certify for interlocutory appeal the order granting plaintiff's motion for conditional certification under the Fair Labor Standards Act. [DE 53]. Plaintiff has responded [DE 59], defendant has replied [DE 62], and in this posture the motion is ripe for disposition. For the reasons that follow, the motion to certify is denied.

DISCUSSION

The Court dispenses with a recitation of the factual and procedural background of this action. On September 26, 2025, the Court entered an order which, in part, granted plaintiffs motion for conditional certification pursuant to the Fair Labor Standards Act (FLSA). [DE 49]. Defendant seeks certification of an interlocutory appeal of this portion of the Court's decision, specifically an order which would permit it to immediately appeal this Court's decision to use a two-step conditional certification approach under the FLSA. Courts may certify interlocutory orders for appeal when they "involve[] a controlling question of law as to which there is substantial ground for difference of opinion and... an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]" 28 U.S.C. § 1292(b); see also In re Pisgah Contractors, Inc., 117 F.3d 133, 136-37 (4th Cir. 1997). A controlling question of law is "a narrow question of

pure law whose resolution will be completely dispositive of the litigation, either as a legal or practical matter, whichever way it goes.” *Fannin v. CSX Transp., Inc.*, 873 F.2d 1438, *5 (4th Cir. 1989) (unpublished). Additionally, certification of an interlocutory appeal is “appropriate where ‘the court of appeals can rule on a pure, controlling question of law without having to delve beyond the surface of the record in order to determine the facts.’” *United States ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 341 (4th Cir. 2017) (citation omitted). The requirements of § 1292(b) are to be strictly construed, *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989), and, even if the requirements are satisfied, a district court retains discretion to decline to certify an interlocutory appeal. See *State of N.C. ex rel. Howes v. W.R. Peele, Sr. Trust*, 889 F. Supp. 849, 852 (E.D.N.C. 1995). The moving party bears “the burden of persuading the court that ‘exceptional circumstances justify a departure’” from the general policy against piecemeal appeals. *Jd.* at 853. “A controlling issue of law must dispose of the litigation no matter how it is resolved, and ‘a question of law would not be controlling if the litigation would necessarily continue regardless of how that question were decided.’” *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897, 2024 WL 2198651, at *2 (E.D.N.C. May 13, 2024) (quoting *Wyeth v. Sandoz, Inc.*, 703 F. Supp. 2d 508, 525 (E.D.N.C. 2010)). Here, even were the Fourth Circuit to agree with defendant’s position regarding a one-step collective action certification procedure, it would not dispose of the litigation. Nor would it dispose of the FLSA-aspect of the litigation; rather, it would remain to be determined whether an FLSA collective action should be certified using a one-step approach. Accordingly, defendant has failed to persuade the Court that exceptional circumstances exist which would support deviating from the policy against piecemeal appeals.

CONCLUSION

Defendant’s motion to certify for interlocutory appeal [DE 53] is DENIED. ‘ SO ORDERED, this
1 day Amt. kde W. BOYLE [
UNITED STATES DISTRICT JUDGE