

CONNECTICUT CIRCUIT COURT, APPELLATE DIVISION

Gaudio v. Romanov, 23 Conn. Supp. 409

184 A.2d 67 (App. Div. 1962) · Decided April 24, 1962

SUMMARY

The court dismissed the appeal for lack of jurisdiction because the defendant appealed from interlocutory rulings rather than a final judgment. It held that orders denying a motion to erase, granting a motion to expunge pleadings, and restoring a case to the docket were not final judgments from which an appeal could be taken. The court also noted that the case had been pending in the Circuit Court and consolidated the defendant’s separate appeals for consideration.

CASE DETAILS

COURT	Connecticut Circuit Court, Appellate Division
WRITING FOR THE COURT	MacDonald, J.; Tunick, J.; Hayes, J.
JURISDICTION	Connecticut
DECIDED	April 24, 1962
DISPOSITION	dismissed
PROCEDURAL POSTURE	The defendant appealed from orders denying his motion to erase the case from the docket, granting the plaintiff’s motion to expunge an amended answer and counterclaim, and granting a motion to restore the case to the docket. The appellate court dismissed the appeal for lack of jurisdiction because none of the challenged orders was a final judgment.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and whether the challenged orders constituted final judgments; an appeal lies only from a final judgment.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Paul Romanov v. Gaudio

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- pleadings
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an appeal lies from an order denying a motion to erase a case from the docket.
2. Whether an appeal lies from an order granting a motion to expunge an amended answer and counterclaim.
3. Whether an appeal lies from an order restoring a case to the docket.
4. Whether the appellate court had jurisdiction in the absence of a final judgment.

HOLDINGS

1. The orders denying the motion to erase the case from the docket and granting the motion to expunge the amended answer and counterclaim were interlocutory and did not constitute final judgments from which an appeal could be taken.
2. An order granting a motion to restore a case to the docket is not a final judgment and is not appealable.

KEY QUOTATIONS

“An appeal may be taken to the Supreme Court of Errors only from a final judgment.” (411)

“The test whether a judgment is ‘final,’ in the sense that an appeal may be taken from it, lies not in its nature, for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties.” (411-412)

“We hold that the rulings of the trial court denying a motion to erase from the docket and granting a motion to expunge the “amended answer” and “counterclaim” are not conclusive of the rights of the parties and are, therefore, not final judgments on which to base an appeal.” (412)

FACTUAL BACKGROUND

The defendant had filed an answer, counterclaim, second answer, and a later amended answer and counterclaim. The trial court denied his motion to erase the action from the docket and granted the plaintiff's motion to expunge the amended pleading because it was filed without leave and contained allegedly scandalous, libelous, irrelevant, and immaterial allegations. After the case was stricken from the docket, the trial court granted a motion to restore it.

PROCEDURAL HISTORY

The action originated in the City Court of Stamford and was pending in the Circuit Court when jurisdiction transferred under General Statutes § 51-273. The defendant filed multiple pleadings and sought to erase the case from the docket; the plaintiff successfully moved to expunge a later amended pleading and counterclaim. After the case was stricken from the docket for failure to request a continuance in writing, the court granted a motion to restore it. The defendant appealed from each ruling, failed to appear at the initial argument date, and the appellate court dismissed the appeal summarily for lack of jurisdiction, while nevertheless stating its views because the defendant was a self-represented layperson.

DISPOSITION

dismissed

CASES CITED

- Marcil v. A. H. Merriman Sons, Inc., 115 Conn. 678, 682
- In re Application of Title Guaranty Co., 109 Conn. 45, 51
- State v. Wilson, State v. Wilson, 22 Conn. Supp. 345 (App. Div.)
- Gores v. Rosenthal, 148 Conn. 218, 221
- Hoberman v. Lake of Isles, Inc., 138 Conn. 573, 575
- Lusas v. St. Patrick's Roman Catholic Church Corporation, 123 Conn. 166, 167
- Glazer v. Rosoff, 120 Conn. 120, 122

OPINION

PER CURIAM.

This appeal was set down for argument on January 5, 1962. On that date, the appellant, the defendant, failed to appear. We then *Page 410 ordered an adjournment to January 15, 1962, at which time the cause was argued, and we dismissed the appeal summarily for lack of jurisdiction, on the authority of Circuit Court Rule 7.37.1; Marcil v. A. H. Merriman Sons, Inc., 115 Conn.

678, 682; and In re Application of Title Guaranty Co., 109 Conn. 45, 51. However, in view of the fact that the defendant, a layman, acted in his own behalf, we deem it in the interest of justice to record our views. In consideration of the entire record and in treating the actions of the defendant as appeals, we are forced to do violence to established appellate procedure and the law, in the desire to give him his full day in court.

For the purpose of argument and decision, the separate appeals from the rulings of the trial court (a) denying the motion to erase, (b) granting the motion to expunge, and (c) granting the motion to restore to the docket have been consolidated. No final disposition of this case was ever made in the former City Court of Stamford.

Accordingly, the case was pending in the Circuit Court on January 1, 1961. General Statutes, § 51-273. In the Circuit Court, first circuit, the following summarized apposite events occurred. (1) The defendant filed a further "answer," having previously filed an "answer," "counterclaim," and "second answer" in the City Court of Stamford.

(2) The defendant's motion to erase the case from the docket was denied, and from this order the defendant appealed. (3) The plaintiff moved to expunge a further pleading by the defendant entitled "amended answer" and "counterclaim," on the ground that it was not filed by leave of

court and that it contained scandalous, libelous, irrelevant and immaterial allegations; from an order granting the motion, the defendant filed another appeal.

(4) Pursuant to notice published in the Connecticut Law Journal on *Page 411 May 23, 1961, and other notice given the defendant, at a session of the Circuit Court held on June 5, 1961, this case was stricken from the docket, continuance not having been requested in writing.

(5) Thereafter, a motion to restore to the docket was filed and granted, and again the defendant has appealed from the ruling. An appeal may be taken to the Supreme Court of Errors only from a final judgment. General Statutes § 52-263.

The Circuit Court Act makes similar provision: "Appeals from any final judgment or action of the circuit court... shall be taken to an appellate session of such court...." § 51-265; *State v. Wilson*, 22 Conn. sup. 345 (App.Div.).

The most recent expression of our Supreme Court of Errors on this subject is found in *Gores v. Rosenthal*, 148 Conn. 218, which is controlling as to the major portion of the instant appeal. In that case, an appeal was taken from orders of the trial court granting a motion to stay the proceedings pending determination of an application for arbitration and denying a motion to expunge a counterclaim.

The Supreme Court of Errors said (p. 221): "Under the circumstances of this case, an appeal lies only from a final judgment.... The test whether a judgment is 'final,' in the sense that an appeal may be taken from it, lies not in its nature, for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties....

If such rights are concluded so that further proceedings after the entry of judgment cannot affect them, then the judgment is 'final' and may be made the basis of an appeal.... An order staying proceedings does not terminate the action but merely postpones its disposition.... It is an interlocutory order.... There was no final judgment and this court has no jurisdiction of the appeal....

The appeal from *Page 412 the denial of the motion to expunge the counterclaim must fail for the same reason." (But see dissenting opinion [p. 222], holding that the order granting the stay is a final judgment and appealable.)

We hold that the rulings of the trial court denying a motion to erase from the docket and granting a motion to expunge the "amended answer" and "counterclaim" are not conclusive of the rights of the parties and are, therefore, not final judgments on which to base an appeal. It is well settled that an order granting a motion to restore a case to the docket is not a final judgment from which an appeal lies.

Hoberman v. Lakeof Isles, Inc., 138 Conn. 573, 575; Lusas v. St.Patrick's Roman Catholic Church Corporation, 123 Conn. 166, 167; Glazer v. Rosoff, 120 Conn. 120, 122; Maltbie, Conn. App. Proc. §§ 10-16. This disposes of the appeal from the order restoring the case to the docket.

The appeal is dismissed. In this opinion TUNICK and HAYES, Js., concurred.