

SUPREME COURT OF NORTH DAKOTA

Gum v. Muddy Boyz Drywall LLC

2026 ND 5 · No. No. 20250324 · Decided January 15, 2026

SUMMARY

The North Dakota Supreme Court dismissed Christopher Gum’s appeal because the district court had not entered a final judgment resolving all claims. Although Gum’s claims were dismissed on the merits, Muddy Boyz Drywall’s counterclaims were dismissed without prejudice, and no certification under N.D.R.Civ.P. 54(b) was entered. The court concluded that the judgments were not final and appealable for purposes of appellate jurisdiction.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Douglas A. Bahr, Justice; Lisa Fair McEvers, Chief Justice; Daniel J. Crothers, Justice; Jerod E. Tufte, Justice; Jon J. Jensen, Justice
JURISDICTION	Supreme Court of North Dakota
DECIDED	January 15, 2026
DOCKET	No. 20250324
DISPOSITION	dismissed
PROCEDURAL POSTURE	Gum appealed from a district court judgment granting Muddy Boyz Drywall LLC's motion for summary judgment and dismissing Gum's claims. The North Dakota Supreme Court dismissed the appeal for lack of appellate jurisdiction because the district court had not entered a final judgment resolving all claims and had not made a proper N.D.R.Civ.P. 54(b) certification.
STANDARD OF REVIEW	Whether the Supreme Court has appellate jurisdiction is determined under the statutory requirements for an appealable final judgment or order. The existence of appellate jurisdiction is a question of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Christopher James Gum v. Muddy Boyz Drywall LLC

TOPICS

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

PRACTICE AREAS

civil procedure

appellate jurisdiction

QUESTIONS PRESENTED

1. Whether the Supreme Court had appellate jurisdiction over an appeal from a judgment dismissing Gum's claims when Muddy Boyz's counterclaims had been dismissed without prejudice but remained capable of being refiled.
2. Whether the district court's judgments constituted a final judgment under N.D.R.Civ.P. 54(b) absent an express determination that there was no just reason for delay and an express direction for entry of judgment.

HOLDINGS

1. A party does not have a right to appeal from a judgment resolving fewer than all claims in a multi-claim action unless the judgment is otherwise appealable by statute or the district court properly certifies it under N.D.R.Civ.P. 54(b).
2. A dismissal without prejudice generally is not appealable and, under the circumstances presented, did not make the judgment dismissing Gum's claims final or appealable.

KEY QUOTATIONS

“Rule 54(b) preserves our longstanding policy to discourage piecemeal appeals in multi-claim or multi-party cases.” (¶ 5)

“The judgments are not final for purposes of our appellate jurisdiction. We dismiss the appeal.” (¶ 9)

FACTUAL BACKGROUND

In May 2024, Christopher Gum filed claims against Muddy Boyz Drywall LLC. Muddy Boyz answered and asserted counterclaims for conversion, breach of contract, fraud, and trespass. The district court granted summary judgment on Gum's claims but did not resolve the counterclaims; it later dismissed those counterclaims without prejudice. Neither party obtained N.D.R.Civ.P. 54(b) certification.

PROCEDURAL HISTORY

Gum sued Muddy Boyz, which asserted counterclaims for conversion, breach of contract, fraud, and trespass. The district court granted summary judgment dismissing Gum's claims on the merits but did not resolve Muddy Boyz's counterclaims. The Supreme Court previously dismissed an appeal for lack of a final judgment in *Gum v. Muddy Boyz Drywall LLC*, 2025 ND 111, 22 N.W.3d 720. After the district court dismissed the counterclaims without prejudice, Gum again appealed; the Supreme Court held that the dismissal did not terminate the litigation and that, absent Rule 54(b) certification, the judgment on Gum's claims remained nonappealable.

DISPOSITION

dismissed

CASES CITED

- Gum v. Muddy Boyz Drywall LLC, 2025 ND 111, 22 N.W.3d 720
- James Vault & Precast Co. v. B&B Hot Oil Serv., Inc., 2018 ND 63, ¶ 8, 908 N.W.2d 108
- Morales v. Weatherford U.S., L.P., 2024 ND 81, ¶ 21, 6 N.W.3d 657
- In re Estate of Hollingsworth, 2012 ND 16, ¶ 9, 809 N.W.2d 328
- Investors Title Insurance Co. v. Herzig, 2010 ND 138, ¶ 24, 785 N.W.2d 863
- Capps v. Weflen, 2013 ND 16, ¶ 7, 826 N.W.2d 605
- Dixon v. Dixon, 2021 ND 94, ¶ 11, 960 N.W.2d 764
- Conrad v. Wilkinson, 2017 ND 212, ¶ 5, 901 N.W.2d 348
- Bell v. Pro Tune Plus, 2013 ND 147, ¶ 4, 835 N.W.2d 858
- Triple Quest, Inc. v. Cleveland Gear Co., Inc., 2001 ND 101, ¶ 7, 627 N.W.2d 379
- Rodenburg v. Fargo-Moorhead Young Men's Christian Ass'n, 2001 ND 139, ¶ 12, 632 N.W.2d 407

OPINION

BAHR, DOUGLAS ALAN, J.

IN THE SUPREME COURT STATE OF NORTH DAKOTA 2026 ND 5 Christopher James Gum, Plaintiff and Appellant v. Muddy Boyz Drywall LLC, Defendant and Appellee No. 20250324 Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Constance L. Cleveland, Judge. DISMISSED. Opinion of the Court by Bahr, Justice. Christopher J. Gum, Bismarck, ND, plaintiff and appellant.

Elliot J. Stoll (argued) and Kendra E. Olson (on brief), Detroit Lakes, MN, for defendant and appellee. Gum v. Muddy Boyz Drywall No. 20250324 Bahr, Justice. [¶1] Christopher Gum appeals from a district court judgment granting Muddy Boyz Drywall LLC's (Muddy Boyz) motion for summary judgment and dismissing Gum's claims.

Because the court has not entered a final judgment resolving all the parties' claims, we lack jurisdiction of the appeal. We dismiss the appeal. I [¶2] In May 2024, Gum filed a complaint against Muddy Boyz. Muddy Boyz filed an answer and counterclaims for conversion, breach of contract, fraud, and trespass. Muddy Boyz later moved for summary judgment requesting Gum's claims be dismissed with prejudice.

After briefing, the district court granted Muddy Boyz's motion and entered judgment dismissing Gum's claims on the merits. Muddy Boyz did not request summary judgment on its counterclaims, and the court's judgment did not dispose of Muddy Boyz's counterclaims. Gum appealed. Gum v. Muddy Boyz Drywall LLC, 2025 ND 111, 22 N.W.3d 720 (Gum I).

We concluded we lacked jurisdiction of the appeal because the district court had not entered a final judgment resolving all the parties' claims, and dismissed the appeal. Id. [¶3] In July 2025, Muddy Boyz filed a motion to dismiss its counterclaims without prejudice.

The district court granted the motion and entered judgment dismissing Muddy Boyz's counterclaims without prejudice. Neither party sought certification under N.D.R.Civ.P. 54(b), and the district court did not direct entry of a final judgment under Rule 54(b) as to Gum's claims. Gum appeals the court's dismissal of his claims. II [¶4] The right to appeal is governed by statute, and the appeal must be dismissed if there is no statutory basis to hear the appeal.

James Vault & Precast Co. v. B&B Hot Oil Serv., Inc., 2018 ND 63, ¶ 8, 908 N.W.2d 108. A party may 1 appeal from a judgment or order in a civil action under N.D.C.C. § 28-27-01. Only judgments and decrees which constitute a final judgment and orders specified by statute are appealable. *James Vault & Precast*, ¶ 8. [¶5] "This Court generally will not consider an appeal in a multi-claim or multi-party action that disposes of fewer than all claims against all of the parties unless the district court has first independently assessed the case and determined a certification under N.D.R.Civ.P.

54(b) is appropriate." *Morales v. Weatherford U.S., L.P.*, 2024 ND 81, ¶ 21, 6 N.W.3d 657. "Rule 54(b) preserves our longstanding policy to discourage piecemeal appeals in multi-claim or multi-party cases." Id. [¶6] Addressing certification under N.D.R.Civ.P. 54(b), we explained: "Under N.D.R.Civ.P. 54(b), the district court is authorized to enter a final judgment adjudicating fewer than all claims of all parties when the court expressly concludes there is no just reason for delay and expressly directs the entry of judgment." [In re Est. of] *Hollingsworth*, 2012 ND 16, ¶ 9, 809 N.W.2d 328 (quoting *Investors Title [Ins.*

Co. v. Herzig], 2010 ND 138, ¶ 24, 785 N.W.2d 863). However, we have cautioned against improvident use of the rule: "Upon requesting Rule 54(b) certification, the burden is upon the proponent to establish prejudice or hardship which will result if certification is denied.

The district court must weigh the competing equities involved and take into account judicial administrative interests in making its determination whether or not to certify under the Rule. A N.D.R.Civ.P. 54(b) certification should not be routinely granted and is reserved for cases involving unusual circumstances where failure to allow an immediate appeal would create a demonstrated prejudice or hardship.

Upon review, we determine whether the case presents an infrequent harsh case warranting the extraordinary remedy of an otherwise interlocutory appeal." *Capps v. Weflen*, 2013 ND 16, ¶ 7, 826 N.W.2d 605 (citations and quotation marks omitted). *Dixon v. Dixon*, 2021 ND 94, ¶ 11, 960 N.W.2d 764. 2 [¶7] Here, the district court entered two judgments, one dismissing Gum's claims on the merits and the other dismissing Muddy Boyz's counterclaims without prejudice.

A dismissal without prejudice generally is not appealable. *Conrad v. Wilkinson*, 2017 ND 212, ¶ 5, 901 N.W.2d 348. “This Court has noted that, because either side may commence another action after a civil complaint is dismissed without prejudice, the order dismissing the action neither ‘determines the action’ nor ‘prevents a judgment from which an appeal might be taken.’” *Bell v. Pro Tune Plus*, 2013 ND 147, ¶ 4, 835 N.W.2d 858 (quoting *Triple Quest, Inc. v. Cleveland Gear Co., Inc.*, 2001 ND 101, ¶ 7, 627 N.W.2d 379). “However, a dismissal without prejudice may be final and appealable if the plaintiff cannot cure the defect that led to dismissal, or if the dismissal has the practical effect of terminating the litigation in the plaintiff’s chosen forum.” *Conrad*, ¶ 5 (quoting *Rodenburg v. Fargo-Moorhead Young Men’s Christian Ass’n*, 2001 ND 139, ¶ 12, 632 N.W.2d 407). [¶8] The judgment dismissing Muddy Boyz’s counterclaims without prejudice does not terminate the litigation in state court.

Neither party presented any argument why the judgment dismissing Muddy Boyz’s counterclaims without prejudice determines Muddy Boyz’s claims or why Muddy Boyz is precluded from commencing another action on the same claims.

The district court’s decisions, even when designated as “judgments,” do not adjudicate the claims of Muddy Boyz and thus do “not end the action as to any of the claims or parties[.]” N.D.R.Civ.P. 54(b). Under the facts presented, absent Rule 54(b) certification, the judgment dismissing Gum’s claims on the merits is not appealable. III [¶9] The judgments are not final for purposes of our appellate jurisdiction.

We dismiss the appeal. [¶10] Lisa Fair McEvers, C.J. Daniel J. Crothers Jerod E. Tufte 3 Jon J. Jensen Douglas A. Bahr 4