

SUPREME COURT OF NEW MEXICO

Santa Fe Pacific Trust, Inc. v. City of Albuquerque

2012 NMSC 28 (2012) · No. 32,937 · Decided August 13, 2012

SUMMARY

The New Mexico Supreme Court held that a summary judgment disposing of all of Bigbyte's claims was a final judgment under Rule 1-054(B)(2), despite language certifying the matter for interlocutory appeal. Because Bigbyte did not file a notice of appeal within the applicable period, the Court affirmed dismissal of its appeal as untimely. The Court also declined to excuse the untimely filing based on ambiguity, judicial error, or unusual circumstances.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Edward L. Chávez, Justice; Petra Jimenez Maes, Chief Justice; Patricio M. Serna, Justice; Richard C. Bosson, Justice; Charles W. Daniels, Justice
JURISDICTION	New Mexico
DECIDED	August 13, 2012
DOCKET	32,937
DISPOSITION	affirmed
PROCEDURAL POSTURE	Original proceeding on certiorari from the New Mexico Court of Appeals' dismissal of Bigbyte's appeal as untimely.
STANDARD OF REVIEW	De novo review of whether an order is final for purposes of appellate jurisdiction.
PRECEDENTIAL VALUE	Published New Mexico Supreme Court opinion; precedential.
PARTIES	Santa Fe Pacific Trust, Inc., Bigbyte.cc Corp. v. City of Albuquerque, Prism Technologies, LLC, TW Telecom of New Mexico, LLC

TOPICS

[final judgment rule](#) [interlocutory appeal](#) [appellate procedure](#) [standard of review](#) [civil procedure](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the November 25, 2009 summary judgment was a final order as to Bigbyte under Rule 1-054(B)(2) NMRA.
2. Whether the interlocutory-appeal certification language or ambiguity in the summary judgment made the order nonfinal as to Bigbyte.
3. Whether judicial error, unusual circumstances, marginal untimeliness, or judicial estoppel excused Bigbyte's failure to file a timely notice of appeal.

HOLDINGS

1. A judgment disposing of all claims against one party is final under Rule 1-054(B)(2) unless the district court expressly provides otherwise in the judgment. Because the summary judgment disposed of all of Bigbyte's remaining claims and did not expressly state that it was nonfinal as to Bigbyte, it was a final, appealable judgment as to Bigbyte.
2. An ambiguous order is insufficient to declare an otherwise final judgment nonfinal under Rule 1-054(B)(2); the judgment must expressly state that it is not final.
3. Bigbyte's appeal could not be excused because its failure to file a timely notice of appeal resulted from its own litigation choices, not judicial error, an unusual circumstance, or a marginally untimely filing.
4. Judicial estoppel did not prevent the City from asserting that the summary judgment was final as to Bigbyte.

KEY QUOTATIONS

“We conclude that the summary judgment was a final order because all of Bigbyte’s claims had been disposed of and the summary judgment did not contain express language stating that the summary judgment was not a final order as to Bigbyte.” (§ 1)

“If this Court were to interpret an ambiguous order as sufficient to declare an otherwise final judgment non-final, we would be supplanting the word “expressly” in Rule 1-054(B)(2) with the word “implicitly.”” (§ 23)

“The summary judgment entered by the district court on November 25, 2009 was a final judgment as to Bigbyte and, as such, Bigbyte should have filed a notice of appeal no later than December 28, 2009.” (§ 34)

FACTUAL BACKGROUND

SFPT owned commercial property in Albuquerque and leased most of the space to Bigbyte. SFPT and Bigbyte asserted claims against the City arising from threatened condemnation and related conduct. The district court dismissed Count III by consent and entered summary judgment against both plaintiffs on Counts I and II, leaving only SFPT's Count IV contract claim pending. The summary judgment stated that it finally disposed of Counts I and II and also included language certifying the matter for interlocutory appeal.

PROCEDURAL HISTORY

The district court entered summary judgment for the City on Counts I and II on November 25, 2009, disposing of all claims asserted by Bigbyte while Count IV remained pending between SFPT and the City. The parties

sought an interlocutory appeal, but the Court of Appeals denied the application. After Count IV was settled and final judgment was entered, SFPT filed a notice of appeal on November 18, 2010, and later amended it to add Bigbyte. The Court of Appeals dismissed Bigbyte's appeal as untimely, and the New Mexico Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hicks v. Eller, 2012-NMCA-061, ¶ 16, ___ P.3d ___
- In re Adoption Petition of Homer F. v. Jeremiah E. (In re Sam Jackson F.), 2009-NMCA-082, ¶ 19, 146 N.M. 845, 215 P.3d 783
- Rice v. Gonzales, 79 N.M. 377, 378, 444 P.2d 288, 289 (1968)
- Khalsa v. Levinson, 1998-NMCA-110, ¶¶ 11-12, 27, 125 N.M. 680, 964 P.2d 844
- Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992)
- Gallup Trading Co. v. Michaels, 86 N.M. 304, 305, 523 P.2d 548, 549 (1974)
- Schultz v. Pojoaque Tribal Police Dep't, 2010-NMSC-034, ¶¶ 19, 21, 148 N.M. 692, 242 P.3d 259
- Trujillo v. Serrano, 117 N.M. 273, 276, 278, 871 P.2d 369, 372, 374 (1994)
- Wakeland v. N.M. Dep't of Workforce Solutions, 2012-NMCA-021, ¶ 25, 274 P.3d 766
- Estate of Gutierrez v. Meteor Monument, L.L.C., 2012-NMSC-004, ¶ 34, 274 P.3d 97
- Romero v. Pueblo of Sandia, 2003-NMCA-137, ¶¶ 5-7, 134 N.M. 553, 80 P.3d 490
- State v. Hernandez, 95 N.M. 125, 126, 619 P.2d 570, 571 (Ct. App. 1980)
- Chavez v. U-Haul Co. of N.M., 1997-NMSC-051, ¶¶ 21-26, 124 N.M. 165, 947 P.2d 122
- Adams v. Tatsch, 68 N.M. 446, 447-48, 362 P.2d 984, 985 (1961)
- Jaritas Live Stock Co. v. Spriggs, 42 N.M. 14, 16, 74 P.2d 722, 723 (1937)
- San Juan 1990-A, L.P. v. El Paso Prod. Co., 2002-NMCA-041, ¶¶ 12, 24-27, 132 N.M. 73, 43 P.3d 1083
- Keith v. ManorCare, Inc., 2009-NMCA-119, ¶¶ 36-37, 147 N.M. 209, 218 P.3d 1257
- William K. Warren Found. v. Barnes, 67 N.M. 187, 188, 354 P.2d 126, 127 (1960)