

NORTH DAKOTA SUPREME COURT

Riemers v. Hill

2014 ND 80 (2014) · No. 20130407 · Decided April 29, 2014

SUMMARY

The North Dakota Supreme Court dismissed Roland Riemers's appeal from a judgment dismissing his claims against the Hills for unpaid rent, late fees, property damage, and punitive damages. The court held that it lacked jurisdiction because the judgment did not resolve the defendants' counterclaim and was not certified as final under North Dakota Rule of Civil Procedure 54(b). The court also noted that the dismissal without prejudice was ordinarily nonappealable because the claims could be refiled.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Dale V. Sandstrom; Daniel J. Crothers; Lisa Fair McEvers; Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	April 29, 2014
DOCKET	20130407
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a district court judgment dismissing the plaintiff's claims without prejudice and awarding attorney fees, while a counterclaim remained unresolved.
STANDARD OF REVIEW	The existence of appellate jurisdiction and appealability are questions governed by statute and may be considered by the Supreme Court on its own motion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Roland Riemers v. Heidee Hill, Jason D. Hill, Hannah Hill, Ashley Roesler, Hailey Marie Hill

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- landlord tenant

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the North Dakota Supreme Court had jurisdiction to review a judgment that resolved the plaintiff's claims but left the defendants' counterclaim unresolved and was not certified as final under N.D.R.Civ.P. 54(b).
2. Whether a judgment dismissing claims without prejudice was appealable under the circumstances presented.

HOLDINGS

1. A judgment that does not adjudicate all claims of all parties is interlocutory and nonappealable unless the district court expressly certifies it as final under N.D.R.Civ.P. 54(b). Because the abuse-of-process counterclaim remained unresolved and there was no Rule 54(b) certification, the judgment was not final or appealable.
2. A judgment dismissing an action without prejudice is ordinarily not appealable because either party may commence another action, unless the dismissal effectively terminates the litigation in the plaintiff's chosen forum, such as when the statute of limitations has run.

KEY QUOTATIONS

“Without a Rule 54(b) certification, a judgment which leaves a counterclaim undecided is not final or appealable.” (§ 6)

“We conclude the judgment in this case is not a final, appealable judgment, and we do not have jurisdiction. We therefore dismiss the appeal.” (§ 9)

FACTUAL BACKGROUND

Riemers leased a rental property to Heidee Hill, who lived there with her family. After the Hills vacated the property, Riemers sued them for unpaid rent, late fees, property damage, and punitive damages. The Hills asserted a counterclaim for abuse of process, which remained unresolved when the district court dismissed Riemers' claims without prejudice and awarded attorney fees.

PROCEDURAL HISTORY

Riemers sued the Hills for unpaid rent, late fees, property damage, and punitive damages. The Hills moved to dismiss, sought attorney fees, and filed a counterclaim for abuse of process. After Riemers failed to appear at the motion hearing, the district court dismissed his claims without prejudice and awarded \$500 in attorney fees; it later denied his petition for rehearing. The North Dakota Supreme Court dismissed the appeal for lack of appellate jurisdiction because the counterclaim remained unresolved and the judgment was not certified under N.D.R.Civ.P. 54(b).

DISPOSITION

dismissed

CASES CITED

- Shannon v. Shannon, 2012 ND 222, ¶ 6, 822 N.W.2d 35
- In re Estate of Hollingsworth, 2012 ND 16, ¶¶ 7, 9, 12, 809 N.W.2d 328
- Investors Title Ins. Co. v. Herzig, 2010 ND 138, ¶ 24, 785 N.W.2d 863
- Kouba v. Febco, Inc., 1998 ND 171, ¶ 8, 583 N.W.2d 810
- Gillmore v. Morelli, 425 N.W.2d 369, 370 (N.D. 1988)
- Meyer v. City of Dickinson, 397 N.W.2d 460, 461 (N.D. 1986)
- Brummund v. Brummund, 2008 ND 224, ¶¶ 5-6, 758 N.W.2d 735
- White v. Altru Health System, 2008 ND 48, ¶ 5, 746 N.W.2d 173

OPINION

DE WALLE, J.

Filed 4/29/14 by Clerk of Supreme Court IN THE SUPREME COURT STATE OF NORTH DAKOTA 2014 ND 80 Roland Riemers, Plaintiff and Appellant v. Heidee Hill and Jason D. Hill and Hannah Hill and Ashley Roesler and Hailey Marie Hill, Defendants and Appellees No. 20130407 Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Lawrence E. Jahnke, Judge.

DISMISSED. Opinion of the Court by VandeWalle, Chief Justice. Roland C. Riemers, self-represented, P.O. Box 14702, Grand Forks, N.D. 58208, plaintiff and appellant; submitted on brief. Timothy C. Lamb, 305 South 4th Street, Grand Forks, N.D. 58201, for defendants and appellees. Riemers v. Hill No. 20130407 VandeWalle, Chief Justice. [¶1] Roland Riemers appealed from a district court judgment dismissing his claims for unpaid rent, late fees, property damage, and punitive damages.

We conclude we do not have jurisdiction and dismiss the appeal. I [¶2] Riemers leased a rental property he owned to Heidee Hill, who lived in the home with her family. After the Hills vacated the property, Riemers sued Hill, her husband, and their three children for unpaid rent, late fees, property damage, and punitive damages.

The Hills filed a motion to dismiss for failure to state a claim upon which relief could be granted and, alleging Riemers' claims were frivolous, also sought attorney fees. The Hills also filed a counterclaim seeking damages for abuse of process. [¶3] A hearing was scheduled on the motion to dismiss. When Riemers failed to appear at the hearing, the district court ordered that his claims be dismissed and awarded attorney fees of \$500 to the Hills.

Riemers filed a petition for rehearing, which was denied by the district court. Judgment was entered dismissing Riemers' claims without prejudice and ordering him to pay \$500 in attorney fees. II [¶4] Before we consider the merits of an appeal, we must first determine whether we have jurisdiction. *Shannon v. Shannon*, 2012 ND 222, ¶ 6, 822 N.W.2d 35; *In re Estate of Hollingsworth*, 2012 ND 16, ¶ 7, 809 N.W.2d 328.

The right to appeal is a jurisdictional matter governed purely by statute, and even if the parties do not raise the issue of appealability, we must dismiss the appeal on our own motion if there is no statutory basis for the appeal and we are without jurisdiction. *Shannon*, at ¶ 6; *Estate of Hollingsworth*, at ¶ 7. [¶5] Only judgments and decrees which constitute a final judgment of the rights of the parties and certain orders enumerated by statute are appealable.

Shannon, 2012 ND 222, ¶ 6, 822 N.W.2d 35. A judgment which does not adjudicate all claims of all of the parties is interlocutory and nonappealable unless the district court has expressly certified the judgment as final under N.D.R.Civ.P. 54(b). *Shannon*, at ¶ 6. [¶6] In this case, the Hills filed a counterclaim for abuse of process.

The counterclaim was never resolved, and the court did not certify the judgment as final under N.D.R.Civ.P. 54(b). Under Rule 54(b), if more than one claim for relief is presented, including by counterclaim, the court may direct entry of a final judgment as to fewer than all claims only if the court determines there is no just reason for delay.

The purpose of Rule 54(b) is to facilitate the longstanding policy to discourage piecemeal appeals of multi-claim litigation. *Estate 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). Without a Rule 54(b) certification, a judgment which leaves a counterclaim undecided is not final or appealable.

See, e.g. *Kouba v. Febco, Inc.*, 1998 ND 171, ¶ 8, 583 N.W.2d 810; *Gillmore v. Morelli*, 425 N.W.2d 369, 370 (N.D. 1988); *Meyer v. City of Dickinson*, 397 N.W.2d 460, 461 (N.D. 1986). [¶7] The judgment in this case does not adjudicate all claims of all of the parties, and the district court did not certify the judgment as final under N.D.R.Civ.P. 54(b).

Accordingly, the judgment is not final and is not appealable. Furthermore, the record on appeal does not suggest that this is the "infrequent harsh case" appropriate for Rule 54(b) certification, and certification, had it been granted, would have been improvident. See *Estate of Hollingsworth*, 2012 ND 16, ¶ 12, 809 N.W.2d 328; *Brummund v. Brummund*, 2008 ND 224, ¶¶ 5-6, 758 N.W.2d 735. [¶8] We further note that the judgment dismissed Riemers' claims without prejudice.

A judgment dismissing an action without prejudice is ordinarily not appealable because either side may commence another action. E.g. *White v. Altru Health Sys.*, 2008 ND 48, ¶ 5, 746 N.W.2d 173. An exception is made if the dismissal without prejudice has the practical effect of terminating the

litigation in the plaintiff's chosen forum, as where the statute of limitations has run on the underlying claims.

Id. In this case, the statute of limitations had not run on the underlying claims, and the district court in its order denying Riemers' petition for rehearing expressly noted that Riemers had the option of refiling his action. III [¶9] We conclude the judgment in this case is not a final, appealable judgment, and we do not have jurisdiction.

We therefore dismiss the appeal. [¶10] Gerald W. VandeWalle, C.J. Dale V. Sandstrom Daniel J. Crothers Lisa Fair McEvers Carol Ronning Kapsner