

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