

SUPREME COURT OF NEVADA

Bergenfield v. BAC Home Loans Servicing, LP

Bergenfield, 2015 NV 68 (Nev. 2015) · No. 67136 · Decided September 10, 2015

SUMMARY

The Supreme Court of Nevada held that a district court order dismissing a complaint while granting leave to amend is not a final, appealable judgment. A plaintiff who elects to stand on the complaint must file written notice of that intent so the district court can enter a final order. Because the appellants did not provide such notice, the court dismissed the appeal for lack of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Gibbons, J.; Hardesty, C.J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	September 10, 2015
DOCKET	67136
DISPOSITION	dismissed
PROCEDURAL POSTURE	Jurisdictional screening of an appeal from a district court order dismissing a complaint for lack of jurisdiction in a tort action.
STANDARD OF REVIEW	The Supreme Court independently determined whether it had subject matter jurisdiction and whether the district court order was final and appealable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Marcia M. Bergenfield, Lawrence Bergenfield v. BAC Home Loans Servicing, LP

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QUESTIONS PRESENTED

1. Whether a district court order dismissing a complaint while granting the plaintiff leave to amend is a final, appealable judgment under Nevada appellate procedure.
2. Whether the Supreme Court had jurisdiction over the appeal when the plaintiffs neither amended their complaint nor filed written notice of intent to stand on the complaint.

HOLDINGS

1. A district court order dismissing a complaint with leave to amend is not a final, appealable judgment.
2. A plaintiff who chooses to stand on a complaint dismissed with leave to amend must file written notice of that intent with the district court; the district court may then enter a final, appealable dismissal order.
3. The appeal was dismissed for lack of jurisdiction because the district court never entered a final, appealable order and the Bergenfields did not notify the district court that they intended to stand on their first amended complaint.

KEY QUOTATIONS

“We conclude that an order of this nature is not a final, appealable judgment.” (at 1)

“If the plaintiff, however, chooses to stand on its complaint as drafted, then it must file a written notice with the district court revealing its choice within 30 days from the date of written notice of entry of the court’s order of dismissal.” (at 4)

FACTUAL BACKGROUND

The Bergenfields filed a complaint against BAC alleging fraud and consumer fraud. After BAC moved to dismiss, the district court dismissed the complaint but granted leave to amend. The Bergenfields filed a first amended complaint, which the district court also dismissed with leave to amend, but they appealed instead of filing another amended complaint or written notice that they intended to stand on the existing complaint.

PROCEDURAL HISTORY

The Bergenfields sued BAC Home Loans Servicing, LP, alleging fraud and consumer fraud. The district court dismissed their original complaint and first amended complaint while granting leave to amend. Instead of filing a second amended complaint or notifying the district court that they intended to stand on the first amended complaint, the Bergenfields filed a notice of appeal. The Nevada Supreme Court dismissed the appeal for lack of appellate jurisdiction because the dismissal order was not final and appealable.

DISPOSITION

dismissed

CASES CITED

- Landreth v. Malik, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011)
- Brown v. MHC Stagecoach, LLC, 129 Nev., Adv. Op. 37, 301 P.3d 850, 851 (2013)

- Valley Bank of Nev. v. Ginsburg, 110 Nev. 440, 444-45, 874 P.2d 729, 733 (1994)
- WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1135-36 (9th Cir. 1997) (en banc)
- Moya v. Schollenbarger, 465 F.3d 444, 451 (10th Cir. 2006)
- Edwards v. Mann Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004)
- Stephens v. S. Nev. Music Co., Inc., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973)

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