

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

United States v. Bryan

No. 2:22-cv-01962-DJC-AC (E.D. Cal. Apr. 1, 2025) · No. 2:22-cv-01962-DJC-AC · Decided April 2, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Defendant Mark Linn Bryan’s motion for leave to pursue an interlocutory appeal under 28 U.S.C. § 1292(b). The court held that Bryan failed to identify a controlling pure question of law or a substantial ground for difference of opinion regarding the court’s handling of his motions to dismiss and its requirement that the United States need not respond to further frivolous filings absent a court request.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Daniel J. Calabretta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 2, 2025
DOCKET	2:22-cv-01962-DJC-AC
DISPOSITION	other
PROCEDURAL POSTURE	Defendant sought certification for an interlocutory appeal under 28 U.S.C. § 1292(b) from orders denying motions to dismiss for lack of subject matter jurisdiction and lack of standing.
STANDARD OF REVIEW	A party seeking certification under 28 U.S.C. § 1292(b) bears the burden of establishing that the order involves a controlling question of law, that substantial ground exists for difference of opinion, and that an immediate appeal may materially advance the litigation.
PRECEDENTIAL VALUE	Unpublished district court order; persuasive rather than precedential.
PARTIES	Mark Linn Bryan v. United States of America

TOPICS

- interlocutory appeal
- appellate procedure
- subject matter jurisdiction
- standing
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court should certify its orders denying Defendant's motions to dismiss for interlocutory appeal under 28 U.S.C. § 1292(b).
2. Whether Defendant demonstrated a controlling pure question of law suitable for interlocutory appeal.
3. Whether Defendant demonstrated a substantial ground for difference of opinion regarding the court's rulings on standing, subject matter jurisdiction, and the absence of a required responsive pleading.

HOLDINGS

1. Certification was denied because Defendant failed to establish a controlling question of law and a substantial ground for difference of opinion.
2. Defendant's due process challenge did not present a controlling pure question of law because it concerned the application of law to the specific facts of the case.
3. Defendant's strong disagreement with the district court's rulings did not establish a substantial ground for difference of opinion.

KEY QUOTATIONS

“a “‘question of law’ means a ‘pure question of law,’ not a mixed question of law and fact or an application of law to a particular set of facts.”” (at 1)

“Interlocutory appeals are granted “sparingly and only in exceptional cases.”” (at 1)

“Courts traditionally will find that a substantial ground for difference of opinion exists where the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented.” (at 2)

FACTUAL BACKGROUND

Defendant filed numerous motions to dismiss during the case, including motions challenging subject matter jurisdiction and standing. The district court had previously denied six motions to dismiss and another later motion as frivolous, and had warned Defendant against further frivolous filings. Defendant argued that the court violated due process by ruling on his motions before the United States formally opposed them and claimed that the government had not established jurisdiction or standing.

PROCEDURAL HISTORY

The district court had previously denied multiple motions to dismiss filed by Defendant, characterized several as frivolous, and ordered that future filings by Defendant would be deemed submitted without a responsive pleading from the United States unless the Court requested one. Defendant then moved for leave to appeal interlocutory orders denying his later motions to dismiss. The district court denied certification.

DISPOSITION

CASES CITED

- Romoland Sch. Dist. v. Inland Empire Energy Ctr., 548 F.3d 738, 747 (9th Cir. 2008)
- Couch v. Telescope, Inc., 611 F.3d 629, 633 (9th Cir. 2010)
- United States v. Woodbury, 263 F.2d 784, 788 n.11 (9th Cir. 1959)
- Barrer v. Chase Bank, USA, N.A., No. 06-415-HA, 2011 WL 1979718, at *4 (D. Or. May 18, 2011)
- Mitchell v. Patenaude & Felix APC, No. C19-809 JLR-TLF, 2019 WL 8060144, at *5 (W.D. Wash. Oct. 10, 2019), adopted, 2020 WL 241937 (W.D. Wash. Jan. 16, 2020)

OPINION

United States v. Bryan

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 UNITED STATES OF AMERICA, No. 2:22-cv-01962-DJC-AC

11 Plaintiff, 12 v. ORDER 13 MARK LINN BRYAN et al., 14 Defendants. 15 16 Defendant Mark
Linn Bryan has moved for leave to appeal this Court's Orders 17 denying his Motion to Dismiss
for Lack of Subject Matter Jurisdiction (ECF No. 160) 18 and Motion to Dismiss for Lack of
Standing (ECF No. 171). (Mot. Interlocutory Appeal 19 (ECF No. 173); see also Minute Order
(ECF No. 161) (denying Defendant's Motion to 20 Dismiss (ECF No. 160)); Minute Order (ECF
No. 172) (denying Defendant's Motion to 21 Dismiss (ECF No. 171).) 22 Generally, a party may
appeal only after final judgment. Romoland Sch. Dist. v. 23 Inland Empire Energy Ctr., 548 F.3d
738, 747 (9th Cir. 2008). In narrow circumstances, 24 however, a district court has authority to
certify a question for interlocutory appeal 25 before final judgment. See 28 U.S.C. § 1292(b);
Couch v. Telescope, Inc., 611 F.3d 26 629, 633 (9th Cir. 2010). The party seeking certification of
an interlocutory appeal 27 bears the burden of establishing three elements: (1) the order involves a
controlling 28 question of law, (2) there is substantial ground for differences of opinion as to the 1
question for which certification is sought, and (3) an immediate appeal may materially 2 advance
the ultimate resolution of litigation. 28 U.S.C. § 1292(b). "Certification under 3 § 1292(b) requires
the district court to expressly find in writing that all three § 1292(b) 4 requirements are met."
Couch, 611 F.3d at 633. Interlocutory appeals are granted 5 "sparingly and only in exceptional
cases." United States v. Woodbury, 263 F.2d 784, 6 788 n.11 (9th Cir. 1959). 7 Here, Defendant
argues (1) there is a controlling question of law as to whether 8 his due process rights were
violated because the Court ruled on his motions before 9 Plaintiff formally opposed them; (2) there

is substantial ground for difference of 10 opinion as to the Court “relieving the Plaintiff’s counsel of his duty to answer” as 11 Plaintiff has “not offered proof of subject matter jurisdiction” or “proof of United States 12 of America’s standing to sue on the record”; and (3) an immediate appeal may 13 materially advance the litigation as the case will have to be dismissed if the Plaintiff 14 cannot show standing to sue. (Mot. Interlocutory Appeal at 2.) 15 Defendant fails to present either a controlling question of law or a substantial 16 ground for difference of opinion. In the context of section 1292(b), a “‘question of law’ 17 means a ‘pure question of law,’ not a mixed question of law and fact or an application 18 of law to a particular set of facts.” *Barrer v. Chase Bank, USA, N.A.*, No. 06-415-HA, 19 2011 WL 1979718, at *4 (D. Or. May 18, 2011). Here, Defendant takes issue with this 20 Court ruling on standing and subject matter jurisdiction before Plaintiff “offered proof” 21 of either, arguing he was denied his due process rights as a result. Thus, Defendant’s 22 due process claim involves the application of law to his specific set of facts, an issue 23 inappropriate for resolution on interlocutory appeal. In addition, as this Court has 24 previously explained (see ECF No. 167 at 2), that Defendant “strongly disagrees” with 25 this Court’s rulings is not a sufficient ground to justify certification for interlocutory 26 appeal. *Couch*, 611 F.3d at 633; see also *Mitchell v. Patenaude & Felix APC*, No. C19- 27 809 JLR-TLF, 2019 WL 8060144, at *5 (W.D. Wash. Oct. 10, 2019) (“Although 28 defendant might strongly disagree with the Court’s prior ruling, this alone is 1 insufficient to meet defendant’s burden.”), adopted, 2020 WL 241937 (W.D. Wash.

2 Jan. 16, 2020). “Courts traditionally will find that a substantial ground for difference of 3 opinion exists where the circuits are in dispute on the question and the court of 4 appeals of the circuit has not spoken on the point, if complicated questions arise 5 under foreign law, or if novel and difficult questions of first impression are presented.” 6 *Couch*, 611 F.3d at 633 (internal citations and quotation marks omitted). Defendant 7 has not demonstrated such a dispute exists here. 8 Indeed, the Court relieved Plaintiff of its requirement to respond to Defendant’s 9 filings for good reason. At the outset of this case, Defendant filed six motions to 10 dismiss between July and August of 2023. (See ECF Nos. 80, 85 92–94, 96.) Plaintiff 11 opposed each motion. (See ECF Nos. 81, 90, 99.) The Court denied those motions 12 thereafter, noting Defendant’s claims were largely frivolous and sounded in sovereign 13 citizen and/or tax-defier ideology. (See ECF No. 107.) Following that ruling, 14 Defendant filed yet another motion to dismiss on October 18, 2023. (ECF No. 118.) 15 The Court denied that motion, finding it was as frivolous as Defendant’s prior six 16 motions. (ECF No. 121.) Additionally, because “Defendant ha[d] previously been 17 advised to refrain from frivolous filings and warned that additional filings of this nature 18 could result in sanctions,” the Court ordered that “all further filings by Defendant 19 w[ould] be deemed submitted with no responsive pleading required by the United 20 States unless expressly requested by the Court.” (Id.) Since that time, Defendant has 21 continued to file frivolous motions to dismiss (see ECF Nos. 160, 163, 171), 22 demonstrating the necessity of the Court’s order. Thus, the Court will not remove this 23 limitation on Defendant’s filings, as much as Defendant may

disagree. 24 /// 25 /// 26 /// 27 /// 28 ///

1 CONCLUSION

2 Accordingly, Defendant's Motion for Leave to File an Interlocutory Appeal (ECF 3 | No. 173) is
DENIED. 4 5 IT IS SO ORDERED. 6 | Dated: _ April 1, 2025 “Daniel CoD tto— Hon. Daniel t |.
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/ UNITED STATES DISTRICT JUDGE

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