

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 10, 2017

Elisabeth A. Shumaker
Clerk of Court

TONY HALL; ELLIS-HALL
CONSULTANTS, LLC,

Plaintiffs - Appellants,

v.

GEORGE B. HOFMANN IV, an
individual; PARSONS KINGHORN
HARRIS, n/k/a COHNE KINGHORN,
P.C. a Utah professional corporation;
MATTHEW M. BOLEY, an individual;
KIMBERLEY L. HANSEN, an individual,

Defendants,

and

GARY E. JUBBER, an individual; DAVID
R. HAGUE, an individual; FABIAN &
CLENDEININ, n/k/a FABIAN VANCOTT,
P.C., a Utah professional coporation,

Defendants - Appellees.

No. 17-4091
(D.C. No. 2:12-CV-00771-DB)
(D. Utah)

ORDER

Before **TYMKOVICH**, Chief Judge, **HOLMES** and **MORITZ**, Circuit Judges.

Plaintiffs Tony Hall and Ellis-Hall Consultants, LLC, appeal an interlocutory district court order dismissing one set of defendants from the underlying consolidated adversary proceeding. This court entered an order to show cause as to why the appeal

should not be dismissed for lack of appellate jurisdiction. The appellants filed a memorandum brief in response, conceding that appellate jurisdiction is lacking now but asking the court to stay appellate proceedings pending entry of final judgment below. After carefully considering the appellants' response, the district court record and the applicable law, we dismiss this appeal for lack of appellate jurisdiction.

This court generally has jurisdiction to review only final decisions. 28 U.S.C. § 1291. A final decision is one that fully terminates all matters as to all parties and causes of action and leaves nothing for the district court to do but execute the judgment. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996); *Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1541 (10th Cir. 1996). The fact that the appellants' separate case was consolidated into a larger adversary proceeding does not give the appellants any special rights. All claims in a consolidated action must be resolved before any party may appeal. *Trinity Broadcasting Corp. v. Eller*, 827 F.2d 673, 675 (10th Cir. 1987) (holding that district court partial decision in consolidated case that does not dispose of all claims is not final under 28 U.S.C. § 1291). In order to appeal now, the appellants had to obtain certification under Rule 54(b) to seek immediate appellate review of one part of a consolidated action. Fed. R. Civ. P. 54(b); *see also id.* The appellants in this case did not seek or obtain Rule 54(b) certification of the dismissal order being appealed either before or after filing the notice of appeal.

In sum, the interlocutory district court order being appealed here is not immediately appealable. *F.D.I.C. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (preferring to avoid piecemeal appellate disposition of what is in practical terms a single

controversy). We reject the appellants' invitation to place this appeal on hold while the district court concludes the consolidated adversary proceeding. *See FirstTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 276 (1991); *Fields v. Oklahoma St. Pen.*, 511 F.3d 1109, 1111 (10th Cir. 2007) (finding that early appeal may ripen after entry of final decision only if "the order leading to the premature notice of appeal has some indicia of finality and is likely to remain unchanged during subsequent court proceedings").

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith
Counsel to the Clerk