

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 11, 2020

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

FRANKLIN MERRILL; ANTHONY
GLOVER; KEITH HERRING;
ANTHONY DENNIS; LARRY JURCAK;
SAMI NASR; RONALD DENNIS;
RODNEY LACY; JAMES NEWBERRY;
TAMI POTIRALA; CRAIG WILLIAMS;
ZIGMUND GUTOWSKI; JOSEPH
HORION; ERIC ARD; ALLEN
CASHMAN; ADAM HEIDE; EDUARDO
SUSTAITA; JOSE GARCIA; ERIC
ROBERTSON; BECKY AUSTIN;
JEFFREY BIGGS; PAULA HORION;
JOSE LIMON; GERORD THOMAS;
JAIME PARRALES; TURRELL
SANDERS; EARNEST WARD, JR.;
CHRISTOPHER ZDENEK; DANNY
LLOYD; DUANE VANDERKAMP;
JOEY BROWN; MELANIE BROWN;
ORLANDO LEBRON; CHARLES
TANKSLEY; GARY GRUBBS; CHRIS
BEAUPRE; RAYNOLD CORNEILLE;
JULIAN LAFRANKS; ANDRE ELLIS;
BENJAMIN JOHNSON; ELVRETT
LITTLEJOHN; JESSIE BRAXTON, JR.;
JOHNNIE WYNNE; STEVEN
KORTMAN; TERRY JONES; DONALD
CREASMAN; ALEXANDER
FLANIGAN; TIM HOLLINGSWORTH,

Plaintiffs,

v.

CONTRACT FREIGHTERS, INC., a
Missouri corporation registered to conduct
business in Colorado, a/k/a CFI,

No. 20-1374
(D.C. No. 1:19-CV-02309-CMA-SKC)
(D. Colo.)

Defendant - Appellee.

John R. Crone,

Attorney - Appellant.

ORDER

Before **LUCERO, McHUGH**, and **MORITZ**, Circuit Judges.

Attorney John Reily Crone seeks to appeal Magistrate Judge S. Kato Crews' September 14, 2020 order [ECF No. 62], in which, among other things, Judge Crews: (1) granted Contractor Freighters, Inc. (CFI)'s motion for sanctions under Rule 11 and 28 U.S.C. § 1927; (2) awarded sanctions in CFI's favor and against Mr. Crone and his law firm; (3) ordered CFI—on or before September 24, 2020—to file an affidavit of fees and costs in accord with D.C.COLO.LCivR 54.3, setting out the reasonable attorneys' fees and costs CFI incurred in preparing and filing the motion for sanctions, the motion to dismiss the case underlying this appeal, and the replies in support of those motions; and (4) ordered that—within ten days after CFI filed its affidavit—Mr. Crone could file a response to CFI's affidavit, addressing the reasonableness of the claimed fees and costs.¹

¹ The court notes that Mr. Crone filed a notice of his and his clients' intent to appeal the sanctions order, entered an appearance on behalf of himself and his clients in this appeal, and filed all documents in this appeal on behalf of both himself and his clients. However, because the district court order addresses and awards sanctions against only Mr. Crone and his law firm (and not his clients), and Mr. Crone did not file a notice

Following receipt of Mr. Crone's docketing statement and review of the district court order he seeks to appeal, this court entered a show cause order, directing Mr. Crone to address this court's jurisdiction over this appeal and allowing CFI to respond in kind. These matters are now before the court on all parties' responses to the jurisdictional show cause order.

Upon consideration of the responses, the district court's docket, and the applicable law, the court dismisses the appeal for lack of a final order and thus of jurisdiction as set forth in greater detail below.

This court's appellate jurisdiction is generally limited to review of final decisions. 28 U.S.C. § 1291; *see also United States v. Nixon*, 418 U.S. 683, 690-92 (1974) ("The finality requirement of 28 U.S.C. § 1291 embodies a strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals."); *see also* Charles A. Wright, *et al.*, 15B Federal Practice and Procedure § 3915.6 (2d ed. 2019) ("A sanction award is not final until the amount has been set.").

The September 14, 2020 order is not final for at least two reasons. First, in this Circuit, "an appeal from the award of sanctions may not be taken until the amount has been determined." *See, e.g., Turnbull v. Wilcken*, 893 F.2d 256, 258 (10th Cir. 1990) (per

of appeal on behalf of the law firm through which he appears to be conducting business (i.e., The Law Office of John R. Crone, LLC), the court has adjusted its caption to show Mr. Crone as the sole appellant.

curiam); *see also Collins v. Daniels*, 916 F.3d 1302, 1319 (10th Cir. 2019) (“Even once the merits of a case have been resolved, an appeal from the award of sanctions may not be taken until the amount has been determined.” (citation and internal quotation marks omitted)). Here, as the district court directed, CFI submitted its affidavit of attorneys’ fees [ECF No. 64] and Mr. Crone submitted his response [ECF No. 67]. Nevertheless, the district court not yet determined the amount of sanctions, and Mr. Crone—in response to CFI’s fee affidavit—contests not only the amount of fees CFI requests but the award itself, making many of the same arguments he makes on appeal regarding Magistrate Judge Crews’ authority to award sanctions. [See ECF No. 67].

Second, absent consent of the parties, “a magistrate judge may not issue a final order directly appealable to the court of appeals.” *Hutchinson v. Pfeil*, 105 F.3d 562, 566 (10th Cir. 1997); *see also S.E.C. v. Merrill Scott & Assocs.*, 600 F.3d 1262, 1269 (10th Cir. 2010). Rather, the review of any matter a magistrate judge decides absent the parties’ consent lies with the district court judge in the first instance. *See, e.g., O’Mara v. Gov’t Emps. Ins. Co.*, 457 F. App’x 751, 752 (10th Cir. 2012) (unpublished) (holding that appellate jurisdiction did not exist over magistrate judge’s order on sanctions because district court had not issued a final, appealable order).

In response to the show cause order, Mr. Crone argues that “the district court’s issuance of a final order through the magistrate constitutes appealable error.” However, because the September 14, 2020 order does not fix the amount of sanctions, that order is

not yet final. In the absence of the entry of a final order, this court lacks jurisdiction over this appeal. *See* 28 U.S.C. § 1291; *Turnbull*, 893 F.2d at 258.

APPEAL DISMISSED. The dismissal of this premature appeal will not preclude a timely appeal from the district court's entry of a final order.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

A handwritten signature in black ink, appearing to read "LA Lee", written over the printed name of Lisa A. Lee.

by: Lisa A. Lee
Counsel to the Clerk