FILED
United States Court of Appeals
Tenth Circuit

August 11, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TONYA MICHELLE MAHONE, as personal representative of the estate of Gerard Watson, deceased,

Plaintiff – Appellant,

v.

CRST EXPEDITED, INC.,

Defendant - Appellee,

and

JACQUELINE R. FLETCHER; GARY EDEN; XYZ CORP.,

Defendants.

No. 19-2151
(D.C. No. 1:15-CV-01009-PJK-KBM)
(D. N.M.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **BRISCOE**, and **MORITZ**, Circuit Judges.

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* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

This appeal grew out of a single-vehicle accident that resulted in a death. The plaintiff, Ms. Tonya Michelle Mahone, sued two individuals (Jacqueline Fletcher and Gary Eden) and a company (CRST Expedited, Inc.). CRST obtained summary judgment, and Ms. Mahone appeals that ruling.

1. Ms. Mahone prevailed at trial, but requested the district court to separate the judgment into separate documents for each defendant.

After CRST obtained summary judgment, Ms. Mahone prevailed at trial against Ms. Fletcher and Mr. Eden, obtaining separate awards of over $3.6 million. The district court memorialized the outcome in a judgment, which recited the grant of summary judgment to CRST and the monetary awards against Ms. Fletcher and Mr. Eden.

2. CRST seeks a limited remand to facilitate a purported settlement.

After obtaining summary judgment, CRST apparently negotiated with Ms. Mahone. The negotiations led Ms. Mahone to state that the parties had reached an agreement in principle. But the parties never finalized the settlement documents.

CRST asks us to enter a limited remand in order to allow the district court to enforce the settlement. A limited remand appears unnecessary. If the parties agreed to settle this appeal, CRST could ask us to dismiss the appeal. *See* 10th Cir. R. 27.3(A)(1)(a)–(b). But CRST has not done so.

If we were to grant a motion to dismiss the appeal, CRST could ask the district court to enforce the remaining aspects of the settlement agreement. A limited remand thus appears unnecessary, and we deny CRST's request.

3. The appeal is untimely.

In any appeal, we must ensure our own jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). In civil cases, we obtain jurisdiction only if the appellant files a timely notice of appeal. *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The deadline for a notice of appeal is 30 days. Fed. R. App. P. 4(a)(1)(A). But this deadline is tolled when a party moves under Fed. R. Civ. P. 59(e) to alter or amend the judgment within 28 days of its issuance. Fed. R. App. 4(a)(4)(A)(iv); *see Yost v. Stout*, 607 F.3d 1239, 1242 (10th Cir. 2010).

Within this 28-day period, Ms. Mahone filed a motion that she labelled as a Rule 59(e) motion to alter or amend the judgment. But her label does not govern; we must instead consider the substance of the motion. *Hannon v. Maschner*, 981 F.2d 1142, 1144 n.2 (10th Cir. 1992). To constitute a motion to alter or amend the judgment under Rule 59(e), the movant must "request[] a substantive change in the district court's judgment or otherwise question[] its substantive correctness." *Nelson v.*

City of Albuquerque, 921 F.3d 925, 928 (10th Cir. 2019) (internal quotation marks omitted).

To ascertain the substance of the motion, we consider what Ms. Mahone requested. She did not ask the district court to change anything in its rulings; she instead asked the court to separately record the outcome in three separate judgments, one for each defendant.

Changing the form of the judgment would not change its substance, so the motion was not a motion to alter or amend. *See In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002) (concluding that a request to change the form of a judgment is not a motion to alter or amend the judgment); *see also* 12 James W. Moore et al., Moore's Federal Practice - Civil § 59.30[2][b] (3d ed. 2021) (stating that a Rule 59(e) motion "must seek a substantive alteration of the judgment, rather than a clerical correction"); *Utah Women's Clinic, Inc. v. Leavitt*, 75 F.3d 564, 567 (10th Cir. 1995) (stating that Rule 59(e) does not cover motions to delete an award of attorney fees or costs from the judgment).

Separating the content into three documents would allow Ms. Mahone to negotiate with Ms. Fletcher and Mr. Eden while appealing the grant of summary judgment to CRST. Without separation, Ms. Mahone viewed the form of the judgment as an unnecessary complication in her negotiations, explaining that

- "[t]he collectability of each of the judgments varies widely due to circumstances related to insurance coverage and contract disputes among the defendants and insurers,"
- one of the individual defendants had been denied insurance coverage, and
- the individual defendants might file bankruptcy, which could delay consideration of the appeal against CRST.

Appellant's App'x, vol. 2 at 417–18. Given these circumstances, Ms. Mahone argued that separate judgments would prevent any single party from complicating her collection efforts.

The district court declined the request, reasoning that Rule 59(e) did not apply because Ms. Mahone was not challenging the correctness of the underlying judgment. We agree with the district court.

Because the motion was not—in substance—a motion to alter or amend the judgment, Ms. Mahone needed to file the notice of appeal within 30 days of the judgment. Fed. R. App. P. 4(a)(1)(A). She did not do so, which prevents us from obtaining jurisdiction. *See Yost v. Stout*, 607 F.3d 1239, 1242 (10th Cir. 2010) ("A timely-filed notice of appeal is mandatory and jurisdictional.").

Ms. Mahone contends that her motion had sought to correct an error by the district court, stating that judgment for CRST was superfluous in light of its award of summary judgment. In the motion itself, however, Ms. Mahone had not suggested that including CRST in the judgment was an

error. Ms. Mahone instead argued only that separation would simplify the appeal and her negotiations with Ms. Fletcher and Mr. Eden.

Finally, Ms. Mahone contends that we have twice characterized post-judgment motions as motions under Rule 59(e) when the movant seeks correction of the judgment to include only proper parties. The cases she relies on, however, are distinguishable.

For example, *United States ex rel. Noyes v. Kimberly Construction, Inc.*, 43 F. App'x 283 (10th Cir. 2002), involved a Rule 59(e) motion to remove a defendant from the judgment because the claim against this defendant had been time-barred. *See id.* at 285 & n.1. That motion was properly treated as a Rule 59(e) motion because it sought a substantive change to the merits of the judgment: removal of a defendant who could not incur liability because of the statute of limitations.

By contrast, Ms. Mahone's motion did not address the potential liability of any defendant. Ms. Mahone just sought separation of the judgment into separate documents in order to facilitate her collection efforts while she appealed the ruling for CRST.

Ms. Mahone also relies on *Varley v. Tampax, Inc.*, 855 F.2d 696 (10th Cir. 1988). There the district court granted summary judgment to a diverse defendant and dismissed the entire suit for lack of diversity jurisdiction. *Id.* at 697–98. The diverse defendant sought to drop the non-diverse parties in order to preserve the award of summary judgment. *See*

id. at 698. Our court treated this as a proper Rule 59(e) motion because the diverse defendant was challenging the substantive decision to dismiss the action for lack of diversity jurisdiction. *Id.* at 700–01.

In Ms. Mahone's post-judgment motion, she did not try to salvage a favorable ruling by modifying the terms of the judgment. Ms. Mahone instead asked the district court to separate the judgment into separate documents solely to facilitate her efforts to negotiate with Ms. Fletcher and Mr. Eden while appealing the grant of summary judgment to CRST.

Though Ms. Mahone's concern was perhaps understandable, she did not seek a substantive change in the judgment or otherwise question its correctness. As a result, her motion was not a true motion to alter or amend under Rule 59(e). In the absence of a true motion to alter or amend under Rule 59(e), Ms. Mahone needed to appeal within 30 days of the judgment. Fed. R. App. P. 4(a)(1)(A). She did not, so we lack jurisdiction.

Appeal dismissed and motion for limited remand denied.

Entered for the Court

Robert E. Bacharach
Circuit Judge