

No.

IN THE

Supreme Court of the United States

SIMPSON JUAN.,

Petitioner,

v.

JNESO DISTRICT COUNCIL 1; ST
MICHAELS MEDICAL CENTER,
MEMBER OF CATHOLIC HEALTH
EAST,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

If a district court certifies in response to a F.R.C.P. 54(b) remand that one of the judgments in a multiple party/multiple claim action has remained final, may the original appeal of said action be reinstated?

PARTIES TO THE PROCEEDING

Simpson Juan, Edison, New Jersey, Petitioner.

JNESO, District Council 1, North Brunswick,
New Jersey, Respondent.

St. Michael's Medical Center, Newark, New
Jersey, Respondent

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JURISDICTION

The Third Circuit Court of Appeals entered its ruling on July 18, 2018 denying Petitioner's motion to reinstate appeal against JNESO, District Council (hereinafter JNESO). The Supreme Court is authorized to hear this matter pursuant to 28 U.S.C. sec. 1254(1).

RELEVANT PROVISIONS INVOLVED

28 U.S.C. sec. 2072 Rules of Procedure and evidence; power to prescribe

“(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title [28 USCS § 1291].”

28 U.S.C. sec. 1291 Final decisions of district courts.

“The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States... “

STATEMENT

This case raises the question of whether a remand pursuant to F.R.C.P. 54(b) requires a party to file a new appeal notwithstanding the District Court’s certification that the judgment below already remained final. This issue has never before been decided by the Supreme Court.

On September 9, 2015 Petitioner filed a complaint in the New Jersey state superior court against Respondent JNESO for breach of its duty of fair representation in connection with an arbitration proceeding. Petitioner also sued his employer, St. Michael’s Medical Center (hereinafter SMMC) for violation of the New Jersey Law Against Discrimination (NJLAD). Thereafter, JNESO sought removal of the matter to federal court pursuant to Section 501 of the Labor Management Relations Act, 29 U.S.C. sec. 85. The case was removed and on July 27, 2016 the District Court granted summary judgment in favor of JNESO, holding that Juan’s complaint was barred by the six month statute of limitations. As to the second count of the complaint, the Court declined to exercise supplemental jurisdiction and dismissed same without prejudice to a refiling in state court.

On appeal, the Third Circuit issued an Order on August 1, 2017, remanding the case to the District Court in order to evaluate the effect of SMMC's bankruptcy petition on its ability to determine whether certification under F.R.C.P. 54 (b) was necessary to provide the Third Circuit with appellate jurisdiction over Juan's claim against JNESO. On remand, the District Court issued an order vacating its dismissal of Count 2 pending the outcome of SMMC's bankruptcy proceeding but further ordering that

"The Court's grant of summary judgment in favor of JNESO remains final as adjudicated by the Court's order and opinion issued on July 27, 2016." (emphasis supplied). (App. C, p. 25a).

Following the bankruptcy court's lifting of the automatic stay against Juan pursuant to a consent order, Juan moved to remand Count 2 of the complaint against SMMC to the state superior court. The District Court granted Juan's motion.

Following the District Court's Order of Remand, Juan then filed a motion in the Third Circuit to reinstate his appeal against JNESO based on the District Court's Order that the judgment in favor of JNESO remained final. In a one page Order, the Third Circuit denied the motion (App.A, p. 1a).

The District Court had subject matter jurisdiction of the within matter pursuant to 28 U.S.C. sec. 1331.

REASONS FOR GRANTING PETITION

- I. THE DECISION OF THE THIRD CIRCUIT WHICH REFUSED TO REINSTATE JUAN'S APPEAL WAS IN CONTRAVENTION OF F.R.C.P. 54(b) BECAUSE THE DISTRICT COURT CERTIFIED THAT ITS JUDGMENT AGAINST JUAN HAD REMAINED FINAL, THEREBY VESTING THE THIRD CIRCUIT WITH CONTINUED JURISDICTION TO HEAR THE ORIGINAL APPEAL**

It has been held that separate, piecemeal appeals during a single litigation are often inefficient, and thereby contrary to the historic federal policy favoring one appeal on all issues at the conclusion of the lawsuit. Curtiss-Wright Corp. vs. General Electric Co., 446 U.S. 1, 8, 100 S. Ct. 1460, 64 L. Ed. 2d. 1 (1980). However, a district court can make its adjudication of discrete claims or parties "final," and immediately appealable by expressly determining that no just reason exists to delay the appeal. Federal Civil Rules Handbook at p. 1053 (2018). Partial judgment determinations allowing immediate appeal permit exceptions from the general policy for those infrequent instances where awaiting a final judgment would be deemed harsh or unjust. Gebloin vs. Bank of America Corp., ___ U.S. ___, 185 S. Ct. 897, 902, 903,, 190 L. Ed. 789 (2015). The requirements for Rule 54(b) partial judgment are that (1) at least one claim or the rights and liabilities of at least one party have become fully resolved; (2) there is no just reason to delay the appeal; and (3) a partial final

judgment is directed to be entered on the docket Federal Civil Rules Handbook at 1054.

In the present case, Juan's claim against JNESO was fully resolved, no reasons were cited for delay of an appeal and judgment in favor of JNESO was directed. The same was true Juan's state law claim against SMMC, but that claim was immediately appealable for other reasons. It was not until the Third Circuit reviewed the matter, however, that a question was raised concerning the effect of the SMMC bankruptcy petition and Juan's violation of the automatic stay upon the state law claim. After the Third Circuit issued its remand order, the District Court certified its judgment in favor of JNESO as not merely final but having remained final. Based upon its Opinion and Order, the District Court was thereby satisfied that the bankruptcy issue only affected the claim against SMMC and not the JNESO claim.

When Juan moved to remand the NJLAD claim back to the superior court once the bankruptcy court vacated the stay and permitted Juan to proceed with his lawsuit, JNESO nonetheless refused to consent to the motion, arguing that "there are still unresolved federal issues in this case that would make federal question jurisdiction still viable" (App. C, pp. 39a-40a). However, the District Court granted the motion and remanded the case back to the state superior court. In its opinion, the Court reasoned that Juan forfeited his right to appeal by not filing an appeal within 30 days of the court's Rule 54(b) certification. But the fact is that the District Court found that the JNESO claim was unaffected by the bankruptcy matter and no doubt that is why the court certified that its judgment on the JNESO case remained final. That being said, there would arguably be no need for Juan to again appeal the

case. The Third Circuit shall have simply reinstated the original JNESO appeal inasmuch as it is a discrete claim which was wholly unaffected by the bankruptcy matter and which resulted in a final judgment.

The Supreme Court should address the issue of whether an appeal from a final judgment involving one party in a multiple party/multiple claim litigation may properly be reinstated where it is determined that finality always existed.

II. THE THIRD CIRCUIT SHOULD HAVE GRANTED JUAN'S MOTION FOR REINSTATEMENT FOR REASONS OF JUDICIAL ECONOMY AND EFFICIENCY

In its Opinion granting Juan's motion to remand his NJLAD claim to the state superior court, the District Court noted that Juan failed to appeal the Court's judgment on the JNESO claim to the Third Circuit. But in fact he did appeal but the Third Circuit never considered the case on the merits. That claim was not affected in any way by the bankruptcy matter which did affect the SMMC claim. Moreover, the District Court reaffirmed the finality of its judgment in the JNESO appeal. Requiring Juan to appeal that judgment once again, file virtually the identical brief he previously filed, and impose additional burdens and responsibilities on the Third Circuit as well as the parties constitutes a waste of judicial economy and is inefficient.

The New Jersey Supreme Court cited the goal of judicial economy and efficiency in the case of Cogdell vs. Hospital Center at Orange, 560 A.2d 1169, 116 N.J. 7 (1989). The court observed that

“Judicial economy and efficiency – the avoidance of waste and delay – remain constants in the application of the entire controversy [***29] doctrine. Fragmented and multiple litigation takes its toll on not only the parties but the judicial institution and the public. This, if anything, is a more pressing concern today than it was in the past. The litigation explosion stretches judicial capabilities enormously, and places extraordinary demands on the courts. These concerns have impelled the Court to pursue novel and creative measures to cope with the increase in caseloads. We are importuned to conserve judicial resources, judicial energy is not inexhaustible or endlessly renewable. Thus, a rule that can control litigational extravagance and reduce piecemeal litigation is a necessity.” (*Id.* at 23-24).

In view of the fact that the record was complete and the case fully briefed by both sides in the JNESO matter, nothing is to be gained by requiring Juan and JNESO to refile identical briefs. Additional judicial resources would have to be expended. The avoidance of waste and delay would be achieved by the simple restoration of Juan’s original appeal.

CONCLUSION

For the reasons hereinbefore set forth,
Petitioner respectfully requests that the Court grant
this Petition for Certiorari.

Respectfully submitted,

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