

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PAULA IDELE KELLER,

Plaintiff-Appellant,

v.

WASHINGTON MUTUAL BANK, F.A.; et
al.,

Defendants-Appellees.

No. 17-56202

D.C. No.

2:16-cv-09165-TJH-SK

Central District of California,
Los Angeles

ORDER

Before: CANBY and GRABER, Circuit Judges.

On May 19, 2017, the district court entered a final order of dismissal. The district court did not enter a separate judgment pursuant to Federal Rule of Civil Procedure 58(b)(1)(C). On May 31, 2017, appellant filed a timely tolling motion for relief from the judgment pursuant to Federal Rule of Civil Procedure 60(b). *See* Fed. R. App. P. 4(a)(4)(A)(vi). The district court denied that motion on July 7, 2017. Appellant filed a notice of appeal on August 8, 2017.

A review of the record reflects that appellant's notice of appeal from the district court's July 7, 2017 order was not filed within 30 days after entry of that order. *See Hollywood v. City of Santa Maria*, 886 F.2d 1228, 1231 (9th Cir. 1989) (no separate judgment required for order denying post-judgment motion; time to appeal begins to run from entry of order denying post-judgment motion).

Therefore the scope of this appeal is limited to a review of the district court's May 19, 2017 final order of dismissal and any preceding non-final orders. *See In re Bonham*, 229 F.3d 750, 760 n.3 (9th Cir. 2000) (time to appeal does not start running until judgment is set forth in a separate document and entered by the clerk); *see also* Fed. R. App. P. 4(a)(7)(A)(ii) (time to appeal begins to run 150 days after entry of final order that is not properly entered as a separate judgment); Fed. R. Civ. P. 58(b)(1)(C) (requiring separate entry of judgment when court denies all relief); *Litchfield v. Spielberg*, 736 F.2d 1352, 1355 (9th Cir. 1984) (an appeal from a final judgment draws into question all earlier, non-final orders and rulings which produced the judgment).

Accordingly, appellee Bank of America, N.A.'s motion to dismiss this appeal for lack of jurisdiction is denied (Docket Entry No. 43).

Appellant's motion for entry of default is denied (Docket Entry No. 36).

Appellant's motion for damages is denied (Docket Entry No. 48).

Appellant's motion to file a traverse brief is denied (Docket Entry No. 53).

Appellant's motion for an extension of time to file the reply brief is granted (Docket Entry No. 50).

The Clerk shall file the answering briefs and excerpts of record received on October 19, 2018 and the reply brief received on January 2, 2019. The Clerk shall strike appellant's second reply brief received on January 28, 2019.

Appellant's request to cure the deficiencies in appellant's reply brief received on January 28, 2019 is denied as moot (Docket Entry No. 54).

Briefing is complete.

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No. 17-56202

D.C. No. 2:16-cv-09165-TJH-SK
Central District of California,
Los Angeles

ORDER

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

Keller's petition for panel rehearing (Docket Entry No. 78) is denied.

No further filings will be entertained in this closed case.

PROOF OF SERVICE

PAULA KELLER –VS– WASHINGTON MUTUAL BANK, FA ET AL

STATE OF CALIFORNIA, COUNTY AND CITY OF LOS ANGELES


I, John P. Kissonas hereby affirm that I am not a party to the within cause and action pending before the United States Supreme Court and that I am a citizen of the State of California, County of Los Angeles, City of Los Angeles, who is over the legal age of eighteen (18) years. My address is 12400 Ventura Boulevard, Suite 856, Studio City, California 91604.

On September 25, 2020, I served the following document(s) entitled:
“PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS” on ALL INTERESTED PARTIES in this action.

SEE ATTACHED SERVICE LIST

- ☒ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the practice of collection and processing correspondences, pleadings and other materials for mailing within the United States Postal Service. The correspondence, pleadings and other matters are deposited with the United States Postal Service with postage affixed thereon fully prepaid in Los Angeles, California, on the same day in the ordinary course of business. I am aware that on motion of party served, that service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of the deposit for mailing in the affidavit.
- ☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to for delivery to the above address(es).
- ☐ **BY TELEFACSIMILE:** I transmitted a copy of the foregoing document(s) this date via Telecopier to the facsimile numbers shown above.
- ☐ **BY PERSONAL SERVICE:** I served such envelope to be delivered by hand to the offices of the addressee(s).
- ☒ [Federal] I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 25, 2020 in Studio City, California


John P. Kissonas