

22-210 DUPREE V. YOUNGER

DECISION BELOW: 2022 WL 738610

LOWER COURT CASE NUMBER: 21-6423

QUESTION PRESENTED:

This case presents a clear, recognized, and intractable conflict regarding an important issue related to the preservation of legal claims for appeal.

Parties may appeal only from "final decisions of the district courts." 28 U.S.C. § 1291. Thus the general rule is that "[a]n appeal from the final judgment brings up all antecedent issues," *In re Kilgus*, 811 F.2d 1112, 1115 (7th Cir. 1987), and that "all interlocutory orders are reviewable on appeal from the final decree," *Gloria Steamship Co. v. Smith*, 376 F.2d 46, 47 (5th Cir. 1967). "Interlocutory orders therefore may be stored up and raised at the end of the case." *Kurowski v. Krajewski*, 848 F.2d 767, 772 (7th Cir. 1988).

Notwithstanding these precepts, the circuits have squarely divided over whether purely legal claims denied at summary judgment are reviewable on appeal after a jury trial where those claims have not been reasserted in a post-trial motion. In the decision below, the Fourth Circuit acknowledged the 8-3-1 circuit split. But the panel declared itself bound by Fourth Circuit precedent and held that it would "not review, under any standard, the pretrial denial of a motion for summary judgment after a full trial and final judgment on the merits, even in circumstances where the issue rejected on summary judgment and not reasserted in a post-trial motion is a purely legal one." That holding was outcome-determinative-the sole basis on which the court refused to consider petitioner's PLRA exhaustion defense-and this case is a perfect vehicle for resolving the widespread disagreement over this important question.

The question presented is:

Whether to preserve the issue for appellate review a party must reassert in a post-trial motion a purely legal issue rejected at summary judgment.

CERT. GRANTED 1/13/2023