

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 27, 2015

Elisabeth A. Shumaker
Clerk of Court

STATE OF NEW MEXICO, ex rel. State
Engineer,

Plaintiff - Appellee,

and

UNITED STATES OF AMERICA,

Intervenor Plaintiff,

v.

ELISA M. TRUJILLO,

Defendant - Appellant.

No. 15-2047
(D.C. No. 6:66-CV-06639-WJ-WPL)
(D. N.M.)

ORDER

This matter is before the court *sua sponte*, upon the identification of two possible jurisdictional defects in this attempted appeal from the district court’s January 12, 2015 Order Adjudicating Post-1982 Domestic Well Water Rights (“Order”). Defendant – Appellant’s docketing statement indicates that this appeal is brought pursuant to Fed. R. Civ. P. 54(b). While paragraph 4 of the Order purports to certify the Order as final and appealable pursuant to Rule 54(b), Defendant – Appellant’s November 1, 2014 “Motion to Quash the Preliminary Injunction Or, Alternatively, For Three Judge Court” (referred to herein as the “Motion”) remains pending in the district court. The arguments and issues raised in the Motion appear related to the issues adjudicated in the Order.

Because the district court's resolution of the Motion may affect the adjudication of the water rights set forth in the Order, there is a question as to whether the Order is properly certifiable under Rule 54(b). *See Waltman v. Georgia-Pacific, LLC*, 590 F. App'x 799, 810 (10th Cir. Dec. 17, 2014) (noting that "a Rule 54(b) certification order must be final in the sense that it is an **ultimate disposition** of an individual claim entered in the course of a multiple claims action) (internal quotations omitted) (emphasis added) (citing *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7 (1980)). Further, even if the Order may be certified pursuant to Fed. R. Civ. P. 54(b), there is a question as to whether the language in paragraph 4 of the Order is sufficient to satisfy this court's certification requirements. *See Stockman's Water Co. v. Vaca Partners*, 425 F.3d 1263, 1265-66 (10th Cir. 2005) (requiring district courts to clearly articulate the reasons and make careful statements based on the record supporting the determination of "finality" and "no just reason for delay," and noting that without such reasons and statements this court has "no basis for conducting a meaningful review of the district court's exercise of discretion"); *see also Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645-46 (10th Cir. 1988) (adopting the practice of notifying the parties of the apparent jurisdictional defect and giving them the opportunity to secure a proper Rule 54(b) certification before dismissing appeal for lack of jurisdiction).

In light of the foregoing, within 21 days from the date of this order Defendant – Appellant shall file with this court a memorandum brief addressing the two possible jurisdictional defects set forth above: (1) whether the Order is properly certifiable under Fed. R. Civ. P. 54(b) despite the pending Motion; and (2) whether the certification

language in the Order is sufficient to satisfy this court's requirements as set forth in *Stockman's Water*. Plaintiff – Appellee, State of New Mexico, ex rel. State Engineer, may file a responsive memorandum brief within 21 days of the filing and service of Defendant – Appellant's memorandum brief.

Briefing on the merits is suspended pending further order of the court. 10th Cir. R. 27.2(C).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'Chris Wolpert', with a long horizontal stroke extending to the right.

by: Chris Wolpert
Chief Deputy Clerk