United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 5, 2025
Lyle W. Cayce
Clerk

No. 24-40484

NICK NATOUR; ENCLARE, L.L.C.,

Plaintiffs—Appellants,

versus

ALI HICHAM HAMDAN; DATA PAYMENT SYSTEMS, INCORPORATED; LUIS REQUEJO; SCOTT BICKELL; ONE PAYMENT SERVICES; ELAVON, INCORPORATED; FISERV, INCORPORATED; BANK OF AMERICA NATIONAL ASSOCIATION; PAIDE, *a California Corporation*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:21-CV-331

Before ELROD, *Chief Judge*, and KING and GRAVES, *Circuit Judges*.

PER CURIAM:[*]

Nick Natour and Enclare, L.L.C. appeal the district court's order denying without prejudice their motion to dissolve a writ of garnishment against them. Because the district court's order is not a final decision under

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

28 U.S.C. § 1291, we DISMISS this appeal without prejudice for lack of jurisdiction.

I

This is the second appeal arising out of the litigation between the parties.[1] The underlying dispute relates to an alleged March 2020 purchase of $170,518.35 in food and drinks by Ali Hamdan at a restaurant owned by Natour, for which Natour asserts he never received payment. Following the district court's entry of final judgment dismissing Natour and Enclare's remaining claims with prejudice,[2] it awarded DPS $190,661.40 in attorneys' fees to be paid by Natour and Enclare.

DPS subsequently filed applications for post-judgment writs of garnishment and execution in separate actions. Relevant here, the garnishment application listed Regions Bank as the garnishee, Natour and Enclare as the judgment debtors, and the attorneys' fees award as the basis for application. Natour and Enclare never moved to stay the garnishment or execution actions, nor did they post any supersedeas bond, so the district court granted both of DPS's applications and issued the writs.

While the United States Marshals were executing the writ of execution, and the days following, Natour and Enclare's counsel filed a barrage of—as the district court put it—"frivolous and incoherent filings" across all three relevant actions.[3] Though the district court noted that "no

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[1] We dismissed Natour and Enclare's first appeal as untimely. *See Natour, et al. v. Hamdan, et al.*, No. 23-40714, 2025 WL 314124, at *1 (5th Cir. Jan. 28, 2025).

[2] Hamdan and Data Payment Systems, Inc. (DPS) were the only remaining defendants at trial, and the district court orally granted their motion for directed verdict.

[3] Among other things, these filings accused the district court of bias, engaging in improper ex parte communications, violating the Judicial Canons and the Rules of Professional Conduct, and requested that the case should be transferred to another judge.

filing clearly la[id] out the issues for the [district court] to decide," the district court temporarily stayed the writ of execution and ordered expedited briefing on various issues.[4]

On July 18, 2024, the district court entered its order (July 18 Order), which denied Natour and Enclare's: (1) Motion for Contempt and Enforcement of Supersedeas (Corrected); (2) Motion to Consolidate and Transfer; and (3) Motion to Dissolve Garnishment. In particular, the Motion to Dissolve Garnishment was denied without prejudice. Because Regions Bank had not answered the writ of garnishment, the district court reasoned that it could not determine what had been garnished up to that point, nor could any party properly challenge the garnishment under the Texas Rules of Civil Procedure.[5] The district court ordered Regions Bank to file an answer, which it did on July 23, 2024.[6]

That same day, Natour and Enclare filed this current appeal, which purported to appeal the July 18 Order "and the matters leading up to those orders." Natour and Enclare subsequently amended their notice of appeal to include: (1) all filings from June 10, 2024, through the amended notice of appeal in the underlying litigation; (2) all filings from the writ of garnishment action; and (3) all filings from the writ of execution action.

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[4] The district court ultimately denied Natour and Enclare's motion to stay the writ of execution as moot because the writ had already been executed. And the district court directed Natour and Enclare to file proper pleadings if they desired a different form of relief other than a stay.

[5] Because the garnishment action was initiated in the Eastern District of Texas, Texas state procedural law governs. *See Licea v. Curacao Drydock Co., Inc.,* 952 F.3d 207, 212 (5th Cir. 2015).

[6] Regions Bank filed an amended answer on July 25, 2024.

II

We review questions of subject matter jurisdiction *de novo*. *See In re Bissonnet Investments LLC*, 320 F.3d 520, 522 (5th Cir. 2003). Without jurisdiction, this "court cannot proceed at all in any cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). Under 28 U.S.C. § 1291, courts of appeals "have jurisdiction of appeals from all final decisions of the district courts of the United States." And "[d]ecisions are final only when they end the litigation on the merits and leave nothing for the court to do but execute the judgment." *GeoSouthern Energy Corp. v. Chesapeake Operating, Inc.*, 241 F.3d 388, 391 (5th Cir. 2001).

The parties disagree over whether we have jurisdiction to hear this appeal. Natour and Enclare assert that we have jurisdiction under 28 U.S.C. § 1291, citing to *National Loan Investors, L.P. v. Fidelity Bank NA*, 1995 WL 153421, at *1 (5th Cir. Mar. 30, 1995) for the proposition that the denial of a motion to dissolve a writ of garnishment is a final and appealable decision.

Conversely, DPS contends that the July 18 Order is not a final decision under § 1291 and therefore we lack jurisdiction to consider the merits of this appeal. DPS stresses that the district court's denial of the Motion to Dissolve Garnishment was without prejudice and to allow proper adjudication of the motion.

Natour and Enclare's briefing is unclear as to which purported "final" orders or decisions they are appealing from, as they set forth a bombardment of alleged errors of the district court. As best as we can tell, though, Natour and Enclare's initial brief seems to focus on the July 18 Order as being the subject of this appeal. For example, Natour and Enclare assert the basis for jurisdiction, the purported applicable standard of review, and portions of their argument on the district court's denial of the motion

to dissolve the writ of garnishment. Moreover, Natour and Enclare also argue that the writs of garnishment and execution are void because Texas law applied to the amount of supersedeas bond, and they were not given notice of the issuance of the writs. We therefore construe this as an appeal of the district court's July 18 Order, which, *inter alia*, denied their motion to dissolve writ of garnishment.[7]

The dispositive question, then, is whether there is anything left for the district court to do with respect to the garnishment action after denying without prejudice Natour and Enclare's motion. We hold that there is. Therefore, the July 18 Order is not a final, appealable decision under § 1291.[8]

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[7] Although the July 18 Order also denied two other motions: (1) Motion for Contempt and Enforcement of Supersedeas, and (2) Motion to Consolidate and Transfer, we see only the denial of the Motion to Dissolve the Garnishment at issue in the briefing. Moreover, neither denial of the other two motions ended the garnishment or execution actions on the merits. *See GeoSouthern Energy Corp.,* 241 F.3d at 391.

[8] As an initial matter, we find Natour and Enclare's reliance on *National Loan* inapplicable. In *National Loan*, we stated that "the denial of a motion to dissolve a postjudgment writ of garnishment is a final judgment." 1995 WL 153421, at *1. While an unpublished case issued before January 1, 1996, is considered precedential, *see* 5th Cir. R. 47.5.3, the opinion's first footnote advises that we determined that the opinion had no precedential value and should not be published. *Nat'l Loan*, 1995 WL 153421, at *1 (citing 5th Cir. R. 47.5.1). Further, the facts and procedural posture here are different. In *National Loan*, the defendant's motion to dissolve included counterclaims, which the judgment creditor responded to with motions to strike, and the defendant also filed an answer to the writ of garnishment before the denial. *Id.* at *1–2. Here, Natour and Enclare's motion did not include counterclaims, DPS did not file any responsive motions, and neither Natour, Enclare, nor Regions Bank filed an answer to the writ. In addition, in *National Loan*, the district court also denied the defendant's motion without a hearing, which we held did not comport with Texas procedural rules and remanded the case for such a hearing. *Id.* at *2. While the district court here did not hold a hearing before denying Natour and Enclare's motion, its denial was without prejudice and in an express effort to comply with Texas procedural rules. As such, we hold that *National Loan* does not control here.

Specifically, the district court stated that:

> The Court will, *at this point*, deny Plaintiffs' request *without prejudice*. Without receiving the garnishee's answer, the Court cannot know what has been garnished up until now, nor can the Plaintiffs or other parties challenge the garnishment under Texas Rules of Civil Procedure 664–664a. The Court will, by separate order, direct garnishee to answer. (emphasis added).

Dispositive here, the district court's denial was without prejudice, not on the merits, and it did not end the garnishment action. Moreover, it is clear from the language in the district court's order that the denial was to allow for proper adjudication of Natour and Enclare's motion—not to end the garnishment action itself. Notably, the July 18 Order all but expressly ordered Natour and Enclare to re-file their motion to dissolve after Regions Bank filed its answer. Natour and Enclare never did. And they are not prohibited from doing so now. Simply put, the district court is ready and waiting for Natour and Enclare's renewed motion to dissolve the garnishment, should they choose to file one.

We therefore hold that the July 18 Order did not "end the litigation on the merits and leave nothing for the court to do but execute the judgment." *GeoSouthern Energy Corp.*, 241 F.3d at 391. As such, we lack jurisdiction to consider the merits of this appeal.

III

Accordingly, we DISMISS this appeal without prejudice for lack of jurisdiction.