IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7785
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

17.38 ACRES OF LAND, MORE OR LESS, SITUATED IN LEFLORE COUNTY, STATE OF MISSISSIPPI, ET AL.,

Defendants,

ROBERT BAIRD MOOR,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:93CV-134

(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:[*]

Robert Baird Moor appeals from the district court's order striking his motion to dismiss and to enjoin and denying his emergency motion to reconsider. To be appealable, an order must be final, 28 U.S.C. § 1291; it must fall within the specific class of interlocutory orders made appealable by statute, 28

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. § 1292(a); or it must fall within some jurisprudential exception. Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991).

The district court's order is not a final judgment because it did not end the litigation on the merits and leave nothing for the court to do but execute judgment. See Silver Star Enterprises, Inc. v. M/V SARAMACCA, 19 F.3d 1008, 1013 (5th Cir. 1994); see also Catlin v. United States, 324 U.S. 229, 233-34, 65 S. Ct. 631, 89 L. Ed. 911 (1945) ("in condemnation proceedings appellate review may be had only upon an order or judgment disposing of the whole case, and adjudicating all rights, including ownership and just compensation, as well as the right to take the property").

Neither does the court's order fall within a jurisprudential exception to the final order rule. The collateral-order exception permits appeal of an interlocutory order if the district court's ruling conclusively determines the disputed question, resolves an important issue that is completely separate from the merits, and cannot effectively be reviewed on appeal from a final judgment. United States v. Bilbo, 19 F.3d 912, 914 (5th Cir. 1994). The court's order did not resolve any issues completely separate from the merits of the condemnation suit. Moor's motions to dismiss, to enjoin, and to reconsider addressed the merits of the proceeding. His objections to the taking are the same ones that constitute his defense to the condemnation case. Further, the district court's order is not effectively unreviewable on appeal from a final judgment. A court of appeals

can review Moor's challenge to the validity of the taking after final judgment is entered. See United States v. 162.20 Acres of Land, 639 F.2d 299, 303 (5th Cir.), cert. denied, 454 U.S. 828 (1981).

Finally, the court's order striking Moor's motion to dismiss and denying his motion to reconsider clearly does not fall within any of the categories of appealable interlocutory orders. See 28 U.S.C. § 1292(a). Although 28 U.S.C. § 1292(a)(1) provides that courts of appeal have jurisdiction of appeals from interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, the portion of the court's order striking Moor's motion to enjoin is also not appealable pursuant to this provision.

Section 1292(a)(1) "`does not authorize appeals from orders that compel or restrain conduct pursuant to the court's authority to control proceedings before it, even if the order is cast in injunctive terms.'" Hamilton v. Robertson, 854 F.2d 740, 741 (5th Cir. 1988) (citation omitted). An "`order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1).'" Id. (citation omitted). An "order termed an `injunction' that functions merely as a stay of proceedings within the court issuing it is not appealable." Rauscher Pierce Refsnes, Inc. v. Birenbaum, 860 F.2d 169, 171 (5th Cir. 1988). Because Moor's motion to enjoin is more properly characterized as a stay of the condemnation proceedings before the district court, the court's order striking

the motion is not appealable as an interlocutory order refusing an injunction. See 28 U.S.C. § 1292(a)(1).

Moor's appeal from the district court's order striking his motion to dismiss and to enjoin and denying his motion to reconsider is not properly before this court because the order is not an appealable interlocutory order. This Court is thus without appellate jurisdiction over the appeal.

DISMISSED.