FILED
United States Court of Appeals
Tenth Circuit

June 1, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RANDY DEAN QUINT; JOHN LINN; MARK MOLINA, individually and on behalf of all others similarly situated,

Plaintiffs - Appellants,

v.

VAIL RESORTS, INC., a Delaware corporation,

Defendant - Appellee.

No. 22-1226
(D.C. No. 1:20-CV-03569-DDD-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BALDOCK**, and **McHUGH**, Circuit Judges.

Randy Dean Quint, John Linn, and Mark Molina ("Colorado Plaintiffs") filed a class and collective action against Vail Resorts, Inc., in the District of Colorado alleging violations of federal and state labor laws ("Colorado Action"). Different plaintiffs filed similar lawsuits against a Vail subsidiary, which are pending in federal and state courts in California. After Vail gave notice it had agreed to a

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

nationwide settlement with some of the other plaintiffs, Colorado Plaintiffs filed an emergency motion asking the district court to enjoin Vail from consummating the settlement. The district court denied their motion, and Colorado Plaintiffs filed this interlocutory appeal.

Because the act that Colorado Plaintiffs sought to enjoin has occurred while their appeal has been pending and this court can no longer provide the relief they requested, we dismiss this appeal as moot.

I. Background

The Colorado Action alleges that certain of Vail's nationwide employment practices violate the Fair Labor Standards Act and state law. The Colorado Plaintiffs seek payment of unpaid wages, overtime, and other benefits for themselves and similarly situated parties. Five other actions filed by different plaintiffs in California asserted similar claims against Vail subsidiaries.

Vail notified Colorado Plaintiffs and the district court that it had negotiated a nationwide settlement with other plaintiffs encompassing all claims for alleged unpaid wages and any other violation of state or federal law ("Settlement"). Vail initially indicated the Settlement would be submitted for approval in the district court in the Eastern District of California, but the settling parties later stipulated to stay the California federal court actions and seek approval of the Settlement in a California state-court action. Colorado Plaintiffs filed an emergency motion seeking an injunction under the All Writs Act "enjoin[ing] [Vail] from consummating a facially collusive 'reverse auction' settlement in a recently filed placeholder California state

court action or any other court." Aplt. App., Vol. 2 at 410. The district court denied the motion, holding the relief Colorado Plaintiffs sought was barred by the Anti-Injunction Act.

Colorado Plaintiffs filed this interlocutory appeal of the denial of an injunction. *See* 28 U.S.C. § 1292(a)(1). At that time, the California state court had already granted preliminary approval of the Settlement and held an initial final-approval hearing. The state court proceeded with a second final-approval hearing, considered but rejected Colorado Plaintiffs' objections, and then granted final approval of the Settlement and entered a final judgment in August 2022. The state court denied Colorado Plaintiffs' motion to vacate the judgment, and their appeal of that order remains pending in the state appellate court. The Colorado Action remains pending in the district court.

II. Discussion

"Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010) (internal quotation marks omitted). "The crucial question is whether granting a *present* determination of the issues offered will have some effect in the real world." *Id.* at 1110 (internal quotation marks omitted). To determine whether the Colorado Plaintiffs' "claim remains for review, we must ascertain what type of relief [they] seek, and whether we can, at this juncture, afford them meaningful relief." *Id.*

We therefore look to the relief sought in Colorado Plaintiffs' emergency motion seeking an injunction. *See Caddo Nation of Okla. v. Wichita & Affiliated Tribes*, 877 F.3d 1171, 1177 (10th Cir. 2017) (considering only the specific temporary injunctive relief the plaintiff sought). They asked the district court to enjoin Vail from consummating the Settlement. *See* Aplt. App., Vol. 2 at 410 (asking the district court "to enjoin [Vail] from consummating a facially collusive 'reverse auction' settlement in a recently filed placeholder California state court action or any other court"); *id.* at 419 (arguing the court should "enjoin Vail from consummating and submitting its proposed settlement for approval in another federal or state court"); *id.* at 426 (requesting the court to "enjoin Vail from consummating the proposed settlement of class and collective claims at issue in this action in their proposed settlement"); *see also id.*, Vol. 4 at 903 (Colorado Plaintiffs' reply asserting "the appropriate remedy is to . . . enjoin Vail from consummating the settlement"). Colorado Plaintiffs did not ask the district court to enjoin the California state court from taking action with regard to the Settlement.

"Generally, an appeal should be dismissed as moot when events occur that prevent the appellate court from granting any effective relief." *Thournir v. Buchanan*, 710 F.2d 1461, 1463 (10th Cir. 1983). More specifically, "where an act sought to be enjoined has occurred, an appeal of a district court order denying an injunction is moot." *Id.* (dismissing appeal of injunction as moot where election had proceeded without the plaintiff's name on the ballot). "If the event sought to be

enjoined has occurred, the applicant has already suffered the harm that [it] sought to forestall. At that point, an injunction cannot provide a remedy." *Id.* at 1463 n.2.

We applied this reasoning in holding the appeal was moot in *Caddo Nation*. The district court had denied the plaintiff's motion seeking to prevent the defendant from continuing to construct a building. 877 F.3d at 1175. But the plaintiff did not seek an injunction from the district court pending appeal, and the defendant's "construction therefore went forward unhindered," culminating in the building's completion. *Id.* at 1176. Limiting our analysis to the relief the plaintiff sought in the district court—prevention of further construction of the building—and holding that relief was now impossible, we held that the appeal was moot. *Id.* at 1177.

Here, after the district court denied their requested relief, Colorado Plaintiffs filed this interlocutory appeal. They did not move for an injunction pending appeal in the district court or this court, nor did they seek expedited review. In the interim, Vail moved forward with consummating the Settlement by obtaining the California state court's final approval. The relief Colorado Plaintiffs sought—an injunction enjoining Vail from consummating the Settlement—is therefore no longer possible.

Colorado Plaintiffs argue this court can still provide them relief by directing the district court to enjoin the Settlement post-final approval. They do not elaborate on this proposed remedy, which at this time would require an injunction directing the state appellate court to reverse the state trial court's approval of the Settlement. Even if such a remedy were feasible, Colorado Plaintiffs did not ask the district court to enjoin the state court; they asked only that Vail be enjoined from consummating the

Settlement. *See id.* (declining to "sua sponte on appeal . . . expand the request for injunctive relief and fashion a [different] remedy").[1]

Colorado Plaintiffs assert we can still provide them effectual relief because the "settlement approval is on appeal and therefore is not final." Aplt. Reply Br. at 11. But they do not explain how any outcome of their pending appeal would allow this court to grant the relief they sought in the district court. Even if Colorado Plaintiffs were to prevail and the state appellate court reversed the trial court's approval of the Settlement, the possibility that Vail would again seek to consummate the Settlement (or another allegedly "facially collusive 'reverse auction' settlement," Aplt. App., Vol. 2 at 410) in another court is too speculative to provide this court with jurisdiction in this appeal. *See Front Range Equine Rescue v. Vilsack*, 782 F.3d 565, 569 (10th Cir. 2015) (concluding that the contingent possibility of potential events—a series of "ifs"—that could lead to a future controversy was insufficient to demonstrate current appellate jurisdiction). "We are without power to render an advisory opinion on a question simply because we may have to face the same question in the future." *Id.* (internal quotation marks omitted).

Finally, Colorado Plaintiffs assert that their interlocutory appeal of the district court's denial of an injunction is not moot because their claims against Vail remain

[1] We note that Colorado Plaintiffs emphasize on appeal that their "motion asked the District Court only to enjoin Vail from submitting to a state court a collusive reverse auction settlement designed to extinguish the federal Colorado Action, ***not*** to stay proceedings in State court." Aplt. Opening Br. at 42 (internal quotation marks omitted).

pending despite final approval of the Settlement. "But though a *case* may not be moot because partial relief is still possible, a *specific request* for an injunction may become moot." *Caddo Nation*, 877 F.3d at 1176; *see also Fleming v. Gutierrez*, 785 F.3d 442, 446 (10th Cir. 2015) (explaining "partial mootness" and holding appeal of preliminary injunction was mooted by passage of an election, although claims regarding future elections remained pending in the district court). Consequently, although Colorado Plaintiffs continue to pursue their claims against Vail, this court can no longer effectively grant the specific relief they requested in their emergency motion for an injunction. Were we now to direct the district court to enjoin Vail from consummating the Settlement, such relief "would have no effect in the real world." *Rio Grande Silvery Minnow*, 601 F.3d at 1112.

III. Conclusion

Colorado Plaintiffs' interlocutory appeal of the district court's denial of their emergency motion seeking to enjoin Vail from consummating the Settlement is dismissed as moot.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge