Christopher Jackson

Partner
303.295.8305
Denver
cmjackson@hollandhart.com

Jessica Smith

Partner
303.295.8374
Denver
jjsmith@hollandhart.com

Tenth Circuit Rules That District Courts Cannot Reopen Cases Under Rule 60(b) That Have Been Voluntarily Dismissed Without Prejudice Under Rule 41(a)

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In *Waetzig v. Halliburton Energy Services*, 2023 U.S. App. LEXIS 23948, — F.4th – (10th Cir. Sept. 11, 2023), the circuit court reversed a district court's order relying on Fed. R. Civ. P. 60(b) to reopen a case that had been voluntarily dismissed without prejudice under Fed. R. Civ. P. 41(a). A split panel held that "a court cannot set aside a voluntary dismissal without prejudice because it is not a final judgment, order or proceeding."

Factual and Procedural Background

Plaintiff Gary Waetzig originally sued his former employer, Halliburton Energy Services (Halliburton), for age discrimination in the District of Colorado. Because Waetzig's contract with Halliburton had an arbitration provision, he voluntarily dismissed his federal lawsuit under Rule 41(a).

Waetzig and Halliburton arbitrated their dispute, and Halliburton won. Unhappy with the result, Waetzig returned to the District of Colorado, seeking to reopen his previously dismissed case and to vacate the arbitration award. Halliburton opposed Waetzig's motion.

Relying on Rule 60(b), the district court granted Waetzig's motion, reopening the case. The district court also vacated the arbitration award under Section 10 of the Federal Arbitration Act, which allows district courts to vacate awards under certain limited circumstances. Halliburton appealed.

Rule 41(a) and Rule 60(b)

Under Rule 41(a), a plaintiff may voluntarily dismiss its complaint without a court order "by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a situation of dismissal signed by all parties who have appeared." And under Rule 60(b), "allows the court to relieve a party from a final judgment, order or proceeding in certain circumstances." *Waetzig*, 2023 U.S. App. LEXIS

23948 (alterations removed).

This appeal presented “an open question in this circuit: Can a district court use Rule 60(b) to vacate a plaintiff's voluntary dismissal without prejudice?”

Notices of Voluntary Dismissal Without Prejudice Under Rule 41(a) Are Not Subject To Rule 60(b)

Fatal to Waetzig's appeal, the U.S. Court of Appeals for the Tenth Circuit ruled that his notice of voluntary dismissal without prejudice under Rule 41(a) did not qualify as a “final judgment, order, or proceeding” under Rule 60(b). Everyone agreed that the voluntary dismissal without prejudice wasn't a final judgment or final order. Rather, Waetzig argued that it was a “final proceeding” that would “save it for Rule 60(b) consideration.”

The circuit court started with the text of Rule 60(b), asking what “final proceeding” should mean in light of “final order” and “final judgment.” “Considering those terms, we are persuaded that . . . a final proceeding must involve, at a minimum, a judicial determination with *finality*.” *Id.* (emphasis in original). “As when a court issues an order or enters a judgment, there must have been some sort of determination.”

In contrast to a voluntary dismissal *with* prejudice—which invokes “the authority of the court” and “ha[s] finality”—a voluntary dismissal *without prejudice*, is “automatic upon filing the notice, meaning no action was required on the part of the court” and there is no “requisite finality” (alterations removed). “The dismissal is automatic, immediately divesting the district court of subject-matter jurisdiction.” *Waetzig*, 2023 U.S. App. LEXIS 23948. “There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play.” *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). “No rights have been determined. And no one has been burdened by court action, a requirement for Rule 60(b) *relief*.” *Waetzig*, 2023 U.S. App. LEXIS 23948 (emphasis in original). Because Waetzig chose to dismiss his original complaint *without prejudice*, the majority concluded that he foreclosed his ability to later rely on Rule 60(b).

Judge Matheson dissented, concluding instead that finality under Rule 60(b) should be measured from the date a litigant asks for the Rule 60(b) relief. “The question here, then, is whether Mr. Waetzig's Rule 41(a)(1)(A)(i) dismissal without prejudice had become 'final' when he filed his Rule 60(b) motion” (Matheson, J. dissenting).

Although he agreed that voluntary dismissals without prejudice are not necessarily final, Judge Matheson contended that “[a] without-prejudice dismissal that is non-final when filed may later become final due to procedural developments.”

In this case, Judge Matheson would have held that, because Waetzig had subsequently been foreclosed from refiling in federal court, his earlier voluntary dismissal without prejudice became final for the purposes of Rule

60(b).

Jessica Smith and Christopher Jackson are attorneys at Holland & Hart, specializing in complex commercial litigation. Smith leads the firm's religious institutions and First Amendment practice and handles a wide range of state and federal appeals. Jackson is an experienced appellate advocate with a strong background in complex civil trials and state government investigations.
