FILED
United States Court of Appeals
Tenth Circuit

June 24, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NELDON P. JOHNSON,

Defendant - Appellant,

and

INTERNATIONAL AUTOMATED SYSTEMS; LTB1; RAPOWER-3, LLC; R. GREGORY SHEPARD,

Defendants.

No. 19-4066
(D.C. No. 2:15-CV-00828-DN-EJF)
(D. Utah)

ORDER

Before **HARTZ**, **HOLMES**, and **EID**, Circuit Judges.

Defendant Neldon Johnson filed a pro se notice of appeal of two district court orders, one directing him to appear at a deposition called by the receiver and the other denying his motion to dismiss both the receiver and the case against him. This court challenged the appellant to demonstrate appellate jurisdiction. *See* 10th Cir. R. 27.3(B). The appellant filed a memorandum brief in response urging the court to allow the appeal to continue because he believes the underlying case should have ended, at least as to him. At the court's direction, the government also filed a memorandum brief addressing

appellate jurisdiction. The government agreed with the court's assessment that appellate jurisdiction is lacking and asked for the appeal to be dismissed. Mr. Johnson also filed a reply to the government's response. After considering the parties' submissions, the district court record and the applicable law, we dismiss this appeal for lack of appellate jurisdiction.

This court generally has jurisdiction to review only final decisions. 28 U.S.C. § 1291. District court orders entered while a receivership continues are not final orders for purposes of appeal. *See generally S.E.C. v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1350 (9th Cir. 1987) ("Because the receivership proceeding is continuing, the order from which [the appellant] attempts to appeal is not a final judgment appealable under 28 U.S.C. § 1291.") As the district court record shows, the receivership in the underlying case has not concluded. The district court has not disassociated itself from the case. *See Gelboim v. Bank of America Corp.*. – U.S. --, 135 S. Ct. 897, 902 (2015). Because the receivership has not been wrapped up or otherwise terminated, appellate jurisdiction cannot be established under § 1291.

The orders Mr. Johnson seeks to appeal are interim procedural orders, which are not suitable for application of any exception to the final judgment rule. *See Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107 (2009) ("[T]he chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for jurisdiction under § 1291." (internal quotations omitted).). Further, this court has already decided that discovery orders like the one directing Mr. Johnson to appear at a deposition and orders denying motions to dismiss are not immediately appealable. *Boughton v.*

Cotter Corp., 10 F.3d 746, 748-50 (10th Cir. 1993) (discovery orders); *Dababneh v. FDIC*, 971 F.2d 428, 432 n.6 (10th Cir. 1992) (denial of motion to dismiss). Mr. Johnson's arguments do not persuade us otherwise.

In sum, the interlocutory district court orders for which Mr. Johnson seeks review are not immediately appealable. *F.D.I.C. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (preferring to avoid piecemeal appellate disposition of what is in practical terms a single controversy).

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by: Lara Smith
Counsel to the Clerk