APPELLATE

A WORD OF CAUTION AGAINST STIPULATING TO A JUDGMENT OR ORDER RESERVING ISSUES FOR POTENTIAL FUTURE APPEALS

by Phillip J. DeRosier

With certain limited exceptions, only "final" decisions are appealable as a matter of right. In Michigan, that typically means "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties." MCR 7.202(6)(a)(i). In the federal system, a decision is final if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v United States*, 324 US 229, 233 (1945). A recent decision from the Sixth Circuit illustrates the danger of parties stipulating to a "final" judgment or order that purports to "reserve" certain issues for further proceedings, including potential future appeals.

In *Bd of Trustees of Plumbers, Pipe Fitters & Mech Equip Serv, Local Union No 392 v Humbert*, 884 F3d 624 (CA 6, 2018), the plaintiff union sued an employer claiming that it had failed to pay the union certain monies under the terms of the parties' collective bargaining agreement. The district court granted summary judgment to the union as to liability, but did not determine the amount of damages to which the union was entitled. *Id.* at 625.

Wanting to proceed immediately with an appeal on the liability issue, the parties agreed to the entry of a "Stipulated Judgment Order" providing that the employer would pay an agreed-upon amount of damages to the union if the district court's liability determination was upheld on appeal. The judgment specifically recited, however, that "none of the parties are waiving any rights or arguments in any subsequent proceedings, appeals, and/or further proceedings before the District Court and/or the United States Court of Appeals for the Sixth Circuit with respect to any issues, including but not limited to the amount of the damages to which the Plaintiffs are entitled to recover." *Id*.

The Sixth Circuit dismissed the appeal, finding that the "Stipulated Judgment Order" wasn't final because it "[left] open the possibility of 'piecemeal appeals.'" *Id*. at 626, quoting *Page Plus of Atlanta, Inc v Owl Wireless, LLC*, 733 F3d 658, 660 (CA 6, 2013). The court observed that "[t]he point of the finality requirement . . . is to make the parties bring all of their issues—liability, damages, and whatever else they choose to litigate—in a single appeal." *Id.* The parties' "Stipulated Judgment Order" violated that fundamental principle because it would "'let the parties pause the litigation, appeal, then resume the litigation' on whatever issues they like" in the event that the court were to reverse the district court's liability determination. *Id.* (citation omitted).

The Sixth Circuit further explained that it didn't make a difference whether the litigation "potentially *would* come to a close" if the court affirmed the district court's decision on liability. Id. What mattered was that "the 'potential for piecemeal litigation'" remained if the court did "anything but affirm." *Id*. (citation omitted).

It doesn't appear that either the Michigan Supreme Court or Court of Appeals has addressed this particular procedural issue, but there is little doubt that the result would be the same under the Michigan Court Rules. By definition, an order or judgment that reserves certain issues for further proceedings doesn't "dispos[e] of all the claims and adjudicates the rights and liabilities of all the parties." MCR 7.202(6)(a)(i).

So while it may seem efficient to craft a judgment or order that decides the core issue in a case (such as liability) and leaves other issues potentially subject to being revisited in the event of a remand, the appellate courts don't see it that way. They see it as giving rise to the potential of piecemeal appeals, which are highly disfavored. If parties wish to preserve appellate rights, they need to ensure that a judgment or order is truly "final."

FOR MORE INFORMATION CONTACT:

Phillip J. DeRosier is a Member in Dickinson Wright's Detroit office. He can be reached at 313.223.3866 or pderosier@dickinsonwright.com

**A version of this article was previously published in the Michigan Defense Quarterly, Vol. 35, No. 1 (2018).*