FILED
United States Court of Appeals
Tenth Circuit

November 3, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

THE CAPTURE ELEVEN GROUP,

Plaintiff Counter Defendant - Appellee/Cross-Appellant,

v.

OTTER PRODUCTS, LLC, a Colorado limited liability company,

Defendant Counter Plaintiff Cross-Claimant - Appellant/Cross-Appellee,

v.

VERITY HOSKINS PRODUCTION, INC.,

Third-Party Defendant.

Nos. 25-1190 & 25-1209
(D.C. No. 1:20-CV-02551-CNS-KAS)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **MORITZ**, and **FEDERICO**, Circuit Judges.

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* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

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In this copyright-infringement action, The Capture Eleven Group (CEG)—an entity formed by commercial photographer Justin L'Heureux—challenged Otter Products, LLC's use of L'Heureux's photos in its product packaging. Otter asserted counterclaims for declarations of noninfringement, ownership, copyright invalidity, and license rights. Otter also filed a third-party complaint asserting breach-of-contract and indemnity claims against Verity Hoskins Production, Inc. (VHP), an independent contractor providing production services to Otter.

The district court granted Otter and VHP's joint stipulation to stay the third-party litigation pending the outcome of CEG's claims. After a seven-day jury trial resolving CEG's claims and Otter's counterclaims, the jury awarded CEG $3 million in profit disgorgement and $114,000 in actual damages. The district court then entered an order granting CEG and Otter's stipulated motion for certification under Federal Rule of Civil Procedure 54(b).

After the parties filed these cross-appeals, we sua sponte ordered supplemental briefing on the sufficiency of the district court's Rule 54(b) certification. We now dismiss the cross-appeals for lack of appellate jurisdiction.

Rule 54(b) provides that, in a multi-claim or multi-party action such as this one, "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." To certify a claim under Rule 54(b) as final and appealable, a district court must expressly determine that the order is final and that there's "no just reason to delay review of the final order until it has conclusively ruled on all claims

presented by the parties to the case." *Okla. Tpk. Auth. v. Bruner*, 259 F.3d 1236, 1242 (10th Cir. 2001). "We have explained that courts entering a Rule 54(b) certification should 'clearly articulate their reasons and make careful statements based on the record supporting their determination of finality and no just reason for delay so that we can review a [Rule] 54(b) order more intelligently and thus avoid jurisdictional remands.'" *Stockman's Water Co., LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005) (cleaned up) (quoting *Old Republic Ins. Co. v. Durango Air Serv., Inc.,* 283 F.3d 1222, 1225 n.5 (10th Cir. 2002)).

The district court's certification order fell far short of that articulation burden here. The order simply recites the procedural history of the case; asserts that the final judgment "is distinct and separable from the remaining claims against VHP"; and states that there's "no just reason for delay." App. vol. 6, 1306. As such, it provides neither the reasoning nor careful statements required by *Stockman's Water*.[1] Indeed, the parties' jurisdictional briefs acknowledge—one directly, the other indirectly—the district court's conclusory analysis and urge us to fill in the gaps by consulting the record.[2] But neither cites any authority for their mutual suggestion, and we have explicitly rejected such consult-the-record invitations in the past.

[1] The closest the order comes to proffering a rationale includes explaining the third-party claims' administrative closure. But there are many reasons apart from finality—docket management top among them—to administratively close a case. So this fact hardly qualifies as clear articulation or careful statement.

[2] The parties' briefs also indicate that they filed a stipulated motion for amended certification of finality at the district court which, at the time of the jurisdictional briefing, remained pending. The district court first deferred ruling on

For instance, in *Schrock v. Wyeth, Inc.*, we refused to "look beyond the text of the district court's order" when the parties "concede[d] that the district court did not make the express determinations required by our decision in *Oklahoma Turnpike*." 727 F.3d 1273, 1278 (10th Cir. 2013). To be sure, the certification order in *Schrock*—unlike the one here—completely neglected to make the express finality and delay determinations required by *Oklahoma Turnpike*. *Id.* Nevertheless, the *Schrock* parties urged the same approach as the parties here, to look beyond the text of the order, and we unequivocally refused to do so. *Id.* at 1278–79.

We later applied *Schrock* in a context closer to the facts here. In *New Mexico v. Trujillo*, the district court's certification order recited the *Oklahoma Turnpike* express determinations. 813 F.3d 1308, 1317 (10th Cir. 2016). But it lacked "any clear articulation of finality or no just reason for delay." *Id.* Instead, it "simply restate[d] the language of the rule in conclusory terms and therefore f[ell] short of proper certification." *Id.* Citing *Schrock*, we refused to "entertain [the] parties' arguments [about finality and no just reason for delay] in the absence of a proper certification from the district court" and concluded we lacked jurisdiction because "the face of the [certification] order [wa]s insufficient to certify the order as a final judgment." *Id.*

The order here is not meaningfully different from the order we rejected as insufficient in *Trujillo*. True, it contains a conclusory assertion that the final

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the motion pending appeal and later denied the motion without prejudice to refiling, finding it moot.

judgment "is distinct and separable from the remaining claims," but it gives no reasoning or explanation as to why.[3] App. vol. 6, 1306. And *Schrock* forbids us from looking beyond the text of the order to fill in the gaps. 727 F.3d at 1278–79.

Under these circumstances, we conclude that the certification order is insufficient on its face, depriving us of jurisdiction. Accordingly, we dismiss these appeals for lack of jurisdiction. As a final matter, we grant Otter's motion to seal volume XIX of the appendix.

Entered for the Court

Nancy L. Moritz
Circuit Judge

[3] In the jurisdictional briefing, the parties' finality arguments focused primarily on the third-party complaint's indemnity claim to the exclusion of the breach-of-contract claim. We note that, at a minimum, a sufficient finality analysis would have needed to explain why both claims are distinct and separable, not just the indemnity claim.