Michigan Law Review

Volume 57 | Issue 1

1958

Federal Procedure - Judgments - Finality of Judgment Required to Begin Running of Time for Appeal

Arnold Henson S.Ed.
University of Michigan Law School

FEDERAL PROCEDURE—JUDGMENTS—FINALITY OF JUDGMENT REQUIRED TO BEGIN RUNNING OF TIME FOR APPEAL—Plaintiff brought action in a federal district court to recover taxes alleged to have been illegally assessed, and for interest thereon. On April 14, 1955, after hearing plaintiff's motion for summary judgment, the district judge filed an opinion stating that the motion was granted, and finding the amount of the taxes paid, but not finding the date of payment or the amount of interest due. The clerk noted: "April 14, 1955 . . . Decision rendered on motion for summary judgment. Motion granted. See opinion on file." On May 24, 1955, plaintiff submitted a formal judgment which was signed and filed by the district judge. The clerk entered the judgment, noting the amount of taxes, interest and costs due the plaintiff. Defendant filed his appeal on July 21, 1955, and plaintiff's motion

to dismiss the appeal as untimely[1] was sustained. On certiorari to the United States Supreme Court, *held,* reversed, two justices dissenting. The actions of all the parties show that the opinion of April 14 was not intended as a final judgment and therefore could not be a direction to enter judgment under rule 58.[2] Furthermore, the clerk's entry of April 14 failed to state the substance of the judgment as required by rule 79(a),[3] since it failed to show the amount of interest due. Therefore, the entry of May 24 constituted the entry of judgment and the defendant's appeal was timely. *United States v. F & M. Schaefer Brewing Co.,* 356 U.S. 227 (1958).

It is clear that the intent of the judge is the crucial factor in determining finality of the judgment,[4] and that no formal judgment need be rendered as a prerequisite to entry of judgment by the clerk.[5] But there has been a conflict as to whether a second, formal judgment should be considered in determining the judge's intent. One view is that the original judgment should not be open to reassessment because the policy of rule 58 is to avoid delay, and because the court delegates its function to counsel by permitting them to present a second judgment.[6] An argument made in support of this view is that it should not be supposed that the judge sought to extend the time for appeal and therefore the second judgment should be treated as a mere inadvertence.[7] The conflicting view is based on the argument that the judge seemingly has not made an empty gesture in filing the second opinion and that all his actions must be considered in determining his intent.[8] In the principal case the majority has extended the latter view beyond use of the second judgment merely to determine intent and, adopting the reasoning

[1] Under rule 73(a), Fed. Rules Civ. Proc., 28 U.S.C. (1952): "When an appeal is permitted by law from a district court to a court of appeals the time within which an appeal may be taken . . . in any action in which the United States . . . is a party . . . shall be 60 days from such entry. . . ."

[2] Rule 58, Fed. Rules Civ. Proc., 28 U.S.C. (1952): "When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by him of the direction. . . . The notation of a judgment in the civil docket as provided by Rule 79(a) constitutes the entry of the judgment; and the judgment is not effective before such entry."

[3] Rule 79(a), Fed. Rules Civ. Proc., 28 U.S.C. (1952): "These notations shall be brief but shall show . . . the substance of each order or judgment of the court. . . ."

[4] In re Forstner Chain Corp., (1st Cir. 1949) 177 F. (2d) 572; Matteson v. United States, (2d Cir. 1956) 240 F. (2d) 517; Brown v. United States, (8th Cir. 1955) 225 F. (2d) 861.

[5] Western Union Telegraph Co. v. Dismang, (10th Cir. 1939) 106 F. (2d) 362; United States v. Higginson, (1st Cir. 1956) 238 F. (2d) 439. It is also generally held that an opinion cannot be a judgment. In re D'Arcy, (3d Cir. 1944) 142 F. (2d) 313; Winkelman v. General Motors Corp., (S.D. N.Y. 1942) 48 F. Supp. 490. However, the judgment can be added to the opinion. In re Forstner Chain Corp., note 4 supra; Steccone v. Morse-Starrett Products Co., (9th Cir. 1951) 191 F. (2d) 197. Further, the judgment can be given orally. In re Forstner Chain Corp., note 4 supra.

[6] Matteson v. United States, note 4 supra.

[7] Bowles v. Rice, (6th Cir. 1946) 152 F. (2d) 543.

[8] United States v. Higginson, note 5 supra; Papanikalaou v. Atlantic Freighters Ltd., (4th Cir. 1956) 232 F. (2d) 663; Cedar Creek Oil and Gas Co. v. Fidelity Gas Co., (9th Cir. 1956) 238 F. (2d) 298.

applied in a criminal case,[9] has declared that the formal judgment is prima facie the final judgment if there is any doubt as to the finality of the first judgment. The majority found that the failure to state the exact amount due plaintiff in the first judgment raised a question as to the judge's intent. The fact that a search of the record would enable a computation of interest did not rectify the situation, since the entry of judgment could not show its substance as required by rule 79(a).[10] If the purpose of rules 58 and 79(a) is practical and for the benefit and protection of the parties,[11] the granting of a motion for summary judgment should be sufficient in itself to apprise the parties,[12] and therefore should suffice as the judgment needed for entry. By giving consideration to the second judgment, the Court now allows counsel to control to some extent the time for appeal, since counsel may submit a formal judgment at any time for the judge's signature.[13] Moreover, by establishing a presumption in favor of the formal judgment in determining what constitutes a final judgment, the Court has virtually eliminated local practice as an evidentiary factor where the judge's intent may be in doubt, despite the reliability of local practice in providing some certainty as to the finality of judgments in each court.[14] But in so doing, the Court has failed to substitute a uniform rule that will enable a definite determination of finality to be made in all federal courts, since intent remains the primary factor and the presumption applies only in doubtful cases. Thus there still exists uncertainty as to what constitutes a final judgment or its entry in federal practice.[15] In light of these considerations, it is believed that an amendment to rule 58 is in order requiring specific direction to the clerk to enter final judgment.[16]

Arnold Henson, S.Ed.

[9] United States v. Hark, 320 U.S. 531 (1944). For two cases holding that the reasoning of the Hark case applies to civil cases, see, e.g., O'Brien v. Harrington, (D.C. Cir. 1956) 233 F. (2d) 17; Bowles v. Rice, note 7 supra.

[10] See United States v. Cooke, (9th Cir. 1954) 215 F. (2d) 528. Cf. Porter v. Bordens Dairy Delivery Co., (9th Cir. 1946) 156 F. (2d) 798; Reynolds v. Wade, (9th Cir. 1957) 241 F. (2d) 208.

[11] Greenwood v. Greenwood, (3d Cir. 1956) 234 F. (2d) 276; Klein v. Nu-Way Shoe Co., (2d Cir. 1943) 136 F. (2d) 986.

[12] United States v. Wissahickon Tool Works, (2d Cir. 1952) 200 F. (2d) 936. *Contra,* Brown v. United States, note 4 supra.

[13] See United States v. Roth, (2d Cir. 1953) 208 F. (2d) 467.

[14] In re Forstner Chain Corp., note 4 supra; Commissioner v. Estate of Bedford, 325 U.S. 283 (1945); principal case at 249, dissenting opinion. See also J. E. Haddock, Ltd. v. Pillsbury, (9th Cir. 1946) 155 F. (2d) 820, cert. den. 329 U.S. 719 (1946), rehearing den. 329 U.S. 826 (1946).

[15] See Erstling v. Southern Bell Telephone & Telegraph Co., (5th Cir. 1958) 255 F. (2d) 93.

[16] An amendment suggested in 18 Fed. Rule Serv. 930 (1953) reads as follows: "A direction by the court as to the judgment to be entered must be specific. Unless the court's direction is given to the clerk in open court and is noted in the minutes, it shall be evidenced by the signature of the judge on the judgment order. If an opinion or memorandum of decision is filed, it will be sufficient if a specific direction as to the judgment to be entered is included therein or appended thereto."