

FILED

11/22/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 16-0587

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0587

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ORDER

DONALD KALTSCHMIDT,

Plaintiff and Appellee,

v.

LARON D. SHANNON,

Defendant and Appellant.

Through his counsel, Appellee Donald Kaltschmidt moves this Court for dismissal of this appeal because the matter is not ripe. Self-represented Appellant Laron D. Shannon has responded in opposition.

Kaltschmidt posits that Shannon is not appealing a final order. M. R. App. P. 4(1)(a). He states that the Flathead County District Court did not decide all claims in the underlying proceeding before Shannon filed a notice of appeal. Kaltschmidt explains that he filed a motion for summary judgment and that Shannon filed two motions to dismiss, which the court viewed as responses. The court entered an order on the pending motions. It granted Kaltschmidt's motion for summary judgment on all but two counts of Kaltschmidt's complaint, which were moot; the court relied primarily on facts established by Shannon's failure to respond to requests for admission. Mont. R. Civ. P. 36(b). The District Court denied Kaltschmidt's summary judgment motion as to Shannon's counterclaims, however, because Kaltschmidt had not provided any argument, legal analysis, or evidence on the counterclaims. Kaltschmidt requests dismissal so the District Court may decide the remaining claims in this controversy.

Shannon responds that this Court should disregard Kaltschmidt's instant motion. He argues that because this Court accepted the appeal, then it must be properly before us. He requests that this Court vacate the Flathead County District Court's Order and Rationale on Pending Motions, issued September 2, 2016, "and to dismiss the lawsuit entirely."

This Court agrees that Shannon's appeal is premature. Shannon attempts to appeal an order that is not final because there are still other claims in the case that must be decided. M. R. App. P. 4(1)(a) provides that "[a] final judgment conclusively determines the rights of the parties and settles all claims in controversy . . . [.]". Because Shannon's counterclaims still have not been decided, all of the claims for relief have not been adjudicated, as required for final judgment on appeal. M. R. App. P. 6(5)(a). Judgment will not be final here until the District Court decides Shannon's counterclaims. At that time, if he still desires to challenge the District Court's summary judgment rulings on Kaltschmidt's complaint, Shannon will be able to appeal. Until then, it would be premature for the Court to entertain the case. M. R. App. P. 6(5)(b).

Finally, as a point of clarification, the Clerk of the Supreme Court must accept and file a notice of appeal when the filing fee is paid or a motion to proceed without paying a filing fee is granted. The Clerk does not determine whether an appeal is properly before the Court. The Court considers the case when the briefs have been filed or when a party files a motion, as Kaltschmidt did here. Having considered that motion, and Shannon's response, the Court determines that Shannon must await the District Court's final judgment in the case before he has the opportunity to pursue an appeal.

IT IS THEREFORE ORDERED that the motion to dismiss appeal is GRANTED, and this appeal is DISMISSED, without prejudice.

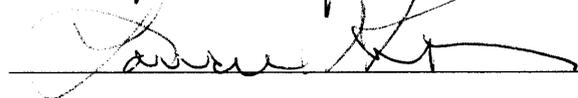
The Clerk is directed to provide a copy of this Order to Peg Allison, Clerk of the Flathead County District Court under Cause No. DV-14-742; to counsel of record; and to Laron D. Shannon personally.

DATED this 22nd day of November, 2016.



Chief Justice





Michael Wood

James G. ...
Justices
