FILED
United States Court of Appeals
Tenth Circuit

April 20, 2021

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

C.W., a minor, by and through his parents B.W. and C.B.,

Plaintiff - Appellant/Cross - Appellee,

v.

DENVER COUNTY SCHOOL DISTRICT NO. 1,

Defendant - Appellee/Cross - Appellant.

COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.; ARC OF THE UNITED STATES,

Amici Curiae.

Nos. 19-1407, 19-1429, 20-1305
(D.C. No. 1:17-CV-02462-MSK-SKC)
(D. Colo.)

ORDER

Before **MATHESON**, **MORITZ**, and **CARSON**, Circuit Judges.

C.W., a minor child with disabilities, is enrolled in the Denver County School District ("District"). Through his parents, C.W. sought and received a due process hearing with a state administrative law judge ("ALJ") under the Individuals with Disabilities Education Act ("IDEA"). He argued the District had failed to provide him a

free appropriate public education ("FAPE") as required by the IDEA. The ALJ provided C.W. only partial relief.

C.W. appealed the ALJ's decision to federal district court. The court ruled partly in favor of C.W. and partly against him. It remanded to the ALJ for further proceedings. Despite this administrative remand, the court entered what it labeled a "Final Judgment." C.W. appealed to this court, the District cross-appealed, and the District later filed a separate appeal from an order awarding attorney fees to C.W.

In light of the administrative remand, we ordered C.W. and the District to address whether the finality requirement for appellate jurisdiction has been met. C.W. argues we have appellate jurisdiction. The District argues we do not. We have considered their arguments and conclude we lack appellate jurisdiction over the appeals and cross-appeal. We therefore dismiss the appeals and cross-appeal. We remand with instructions to vacate the "Final Judgment" and stay this action pending completion of the administrative remand.

I. BACKGROUND

A. *Procedural History*

1. Administrative Proceedings

In September 2016, C.W., through his parents, filed a due process complaint pursuant to the IDEA with the Colorado Office of Administrative Courts, arguing that the District had denied him a FAPE. In July 2017, the ALJ issued a final decision holding that the District had failed to provide C.W. a FAPE during parts of the 2014-15, 2015-16,

and 2016-17 academic years.[1] But the ALJ also held that an individualized education program ("IEP") the District prepared for C.W. in February 2017 was substantively adequate under the IDEA.

2. **District Court Proceedings**

C.W. brought this action in October 2017. It has two parts. First, C.W. sought review of the ALJ's decision finding the February 2017 IEP adequate. Second, C.W. alleged non-IDEA claims under the Americans with Disabilities Act, Rehabilitation Act, and Fourteenth Amendment Equal Protection Clause, seeking only damages.

In a September 2019 order, the district court agreed with C.W. that the February 2017 IEP was inadequate and reversed the ALJ. But the court granted summary judgment for the District on C.W.'s non-IDEA claims because he did not administratively exhaust them. The court remanded to the ALJ "for a determination on what relief the Plaintiff is due given that the 2017 IEP has not provided a FAPE at all times it was operative." App. at 367.

Instead of staying the proceedings and retaining jurisdiction over the action in light of the administrative remand, the district court entered a "Final Judgment."

3. **Appellate Proceedings**

C.W. appealed from the district court's September 2019 order and the "Final Judgment." On appeal, C.W. argues he was not required to exhaust the administrative process for his non-IDEA claims or alternatively that he met any exhaustion requirement.

[1] Colorado law does not provide for an administrative appeal after the ALJ's decision. Colo. Rev. Stat. § 22-20-108(3)(c).

The District cross-appealed. It argues the February 2017 IEP was adequate. While C.W.'s appeal and the District's cross-appeal were pending, the district court awarded attorney fees to C.W. The District appealed from that order, too. In light of the pending administrative remand, we ordered the parties to address whether the district court's order granting summary judgment was final.

B. ***Legal Background***

The following explains (1) the finality requirement, (2) the administrative remand rule, and (3) the practical finality rule.

1. **Finality Requirement**

Under 28 U.S.C. § 1291, we have "jurisdiction of appeals from all final decisions of the district courts of the United States." "A final decision is one 'that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *W. Energy All. v. Salazar*, 709 F.3d 1040, 1047 (10th Cir. 2013) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978)). "Every appellant bears the burden of proving appellate jurisdiction by demonstrating the finality of the challenged decision or identifying a specific grant of jurisdiction." *Zen Magnets, LLC v. Consumer Prod. Safety Comm'n*, 968 F.3d 1156, 1164 (10th Cir. 2020).

Appellate jurisdiction does not depend on whether a district court labeled an order or a judgment as "final." *Riley v. Kennedy*, 553 U.S. 406, 419-20 (2008); *see Sullivan v. Finkelstein*, 496 U.S. 617, 628 n.7 (1990) (observing a district court may not "control [an] order's appealability" by "label[ing] a nonappealable interlocutory order as a 'final judgment'").

2. **Administrative Remand Rule**

This case implicates the "administrative remand rule."[2] It provides that a district court's order remanding "to an administrative agency for further proceedings is ordinarily not appealable because it is not a final decision." *W. Energy All.*, 709 F.3d at 1047 (quotations omitted). "In determining whether the district court's order was a final decision under the administrative remand rule, this court considers the nature of the agency action as well as the nature of the district court's order." *N.M. Health Connections v. U.S. Dep't of Health & Hum. Servs.*, 946 F.3d 1138, 1157 (10th Cir. 2019) (quotations omitted).

"As to the nature of the agency action, we consider whether it was essentially adjudicatory, essentially legislative, or some nonadversarial action such as grant of a license." *Id.* (quotations omitted). "[W]e view the [administrative] remand rule as most appropriate in adjudicative contexts." *Id.* (quotations omitted). Typically, "a remand from a district court to an agency occurs when an agency has acted in an adjudicative capacity." *Am. Wild Horse Pres. Campaign v. Jewell*, 847 F.3d 1174, 1184 (10th Cir. 2016) (quotations omitted).

As to the nature of the district court's order, "we consider its character, including whether it returns an action to the agency for further proceedings. If the district court's order is not a remand in the typical sense, the administrative remand rule is inapplicable." *N.M. Health Connections*, 946 F.3d at 1158 (citation, quotations, and alteration omitted).

[2] This terminology, though not the concept, is unique to our court of appeals.

We ask whether the district court's order is analogous to the "traditional notion of a 'remand,' wherein the reviewing court returns an action to a lower court for further proceedings." *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 698 (10th Cir. 2009). For example, we have treated remand orders as final when a district court "essentially instructs the agency" how to rule, *Rekstad v. First Bank Sys., Inc.*, 238 F.3d 1259, 1262 (10th Cir. 2001), orders an administrative agency to retroactively correct a procedural error that would have "no impact" on the challenged agency action, *Am. Wild Horse Pres. Campaign*, 847 F.3d at 1184-85, or enjoins an agency from future violations of a law, *Richardson*, 565 F.3d at 698. These examples do not describe the circumstances here.

Courts of appeal have routinely applied the administrative remand rule when district courts have remanded IDEA cases to state ALJs. *E.g.*, *Avaras ex. rel. A.A. v. Clarkstown Cent. Sch. Dist.*, 752 F. App'x 60, 62-63 (2d Cir. 2018) (unpublished); *L.W. v. Jersey City Bd. of Educ.*, 824 F. App'x 108, 110-11 (3d Cir. 2020) (unpublished); *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 152 F.3d 1159, 1160-61 (9th Cir. 1998) (per curiam).

3. **Practical Finality Rule**

We have recognized three exceptions to the administrative remand rule: (1) the collateral order doctrine, (2) the practical finality rule, and (3) the pendent appellate jurisdiction doctrine. *See Zen Magnets, LLC*, 968 F.3d at 1166-67; *W. Energy All.*, 709 F.3d at 1049. C.W. invokes only the practical finality rule.

Under this exception, "we sometimes regard a district court's remand to an agency as practically final." *Zen Magnets, LLC*, 968 F.3d at 1164 (quotations omitted). We first ask whether "it is clearly urgent that an important issue—one that is serious and unsettled, and not within the trial court's discretion—be decided." *W. Energy All.*, 709 F.3d at 1049 (quotations omitted). If we find an important and urgent issue, we proceed to a "balancing test." *Id.* at 1050 (quotations omitted). We "ask whether the danger of injustice by delaying appellate review outweighs the inconvenience and costs of piecemeal review." *Zen Magnets, LLC*, 968 F.3d at 1165 (quotations omitted). The practical finality rule "must be narrowly construed and pragmatic finality invoked only in truly unique instances if we are to preserve the vitality of [28 U.S.C.] § 1291." *W. Energy All.*, 709 F.3d at 1049 (quotations omitted).

"In practice, we have applied the practical finality rule" to "review important legal questions which a remand may make effectively unreviewable." *Miami Tribe of Okla. v. United States*, 656 F.3d 1129, 1140 (10th Cir. 2011) (quotations omitted). This concern most often arises with objections raised on appeal by government agencies and not by private litigants. *Zen Magnets, LLC*, 968 F.3d at 1165; *N.M. Health Connections*, 946 F.3d at 1158 n.17; *W. Energy All.*, 709 F.3d at 1050; *see Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1175 (9th Cir. 2011). After a district court remands to an agency for further proceedings, the agency must conform its proceedings to the remand order. *See Miami Tribe of Okla.*, 656 F.3d at 1138-39 & n.10; 33 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 8381 (2d ed., Oct. 2020 update) ("[A]gencies . . . must of course give respect to . . . remand orders."). And once the

agency completes its remand proceedings, the government, unlike a private litigant, typically "has no avenue for obtaining judicial review of its own administrative decisions." *Bender v. Clark*, 744 F.2d 1424, 1428 (10th Cir. 1984) (emphasis omitted).

Thus, when a district court's remand order requires an agency to undertake further proceedings, the agency "face[s] the unique prospect of being deprived of [appellate] review altogether" after the administrative remand, *Alsea Valley All. v. Dep't of Com.*, 358 F.3d 1181, 1184 (9th Cir. 2004), unless we invoke the practical finality exception to "review important legal questions which a remand may make effectively unreviewable," *Graham v. Hartford Life & Accident Ins. Co.*, 501 F.3d 1153, 1158 (10th Cir. 2007) (quotations omitted). By contrast, a private litigant's objections to a district court's rulings are usually "reviewable upon conclusion of the remand proceedings." *W. Energy All.*, 709 F.3d at 1050 (quotations omitted); *see Rekstad*, 238 F.3d at 1262 (similar).

II. ANALYSIS

We lack appellate jurisdiction over the appeals and cross-appeal. Neither the district court's September 2019 order nor the "Final Judgment" was a final decision for jurisdictional purposes. The practical finality rule does not apply.

1. No Final Decision

The district court never entered a final decision. The September 2019 order remanded to the ALJ to determine "what relief the Plaintiff is due given that the 2017 IEP has not provided a FAPE at all times it was operative." App. at 367. Such "[a]n administrative remand is not ordinarily considered a final decision." *Zen Magnets, LLC*, 968 F.3d at 1164.

Both "the nature of the agency action as well as the nature of the district court's order" confirm that the administrative remand was not a final decision. *N.M. Health Connections*, 946 F.3d at 1157 (quotations omitted). The agency action here—an IDEA due process hearing—was adjudicatory. And the remand was analogous to a remand by an appellate court to a district court. The district court here affirmed the ALJ in part, reversed the ALJ in part, and remanded for the ALJ to determine what remedies the District owed to C.W. Because C.W. and/or the District might seek review of the ALJ's remedy determinations in district court, the district court did not make a final decision when it granted summary judgment to the District on C.W.'s non-IDEA claims.

We owe no deference to the district court's use of the "Final Judgment" label when we determine what is truly final and appealable. *Riley*, 553 U.S. at 419-20; *Finkelstein*, 496 U.S. at 628 n.7; *see A.A.*, 752 F. App'x at 63-64 (2d Cir.) (in an IDEA appeal involving an administrative remand, holding that the district court's purportedly final judgment was nonfinal). Because the district court did not render a final decision, its "Final Judgment" moniker was premature.

We hold that neither the September 2019 order nor the "Final Judgment" was a final, appealable decision.

2. **Practical Finality Rule Inapplicable**

C.W. argues we have jurisdiction under the practical finality rule. We disagree.

C.W. has not identified an "important" and "urgent" issue. *W. Energy All.*, 709 F.3d at 1049-50 (quotations omitted). He wishes to challenge the district court's grant of summary judgment to the District on his non-IDEA claims. We can fully adjudicate

C.W.'s appeal once the administrative remand concludes and the district court enters a proper final judgment. C.W. is a private litigant. He is not precluded from appealing issues after an administrative remand.[3]

Although we need not reach the balancing test, we note that C.W. has not presented a "truly unique instance[]," *id.* at 1049, where the benefits of earlier appellate review of his non-IDEA claims "outweigh[] the inconvenience and costs of piecemeal review," *Zen Magnets, LLC*, 968 F.3d at 1165. If we were to proceed now with this appeal, we would address the district court's summary judgment ruling on the non-IDEA claims, but we would need to await an additional potential appeal by C.W. and/or the District about the ALJ's decision on remand. Doing so would open the possibility of piecemeal review and compromise the finality principle. C.W. does not justify why immediate appellate review would provide benefits that outweigh these costs.

C.W. argues that because the district court entered a "Final Judgment" and administratively closed this action, any appeal by C.W. or the District from the ALJ's decision on remand would require a new, distinct action to be commenced in district court. He contends that because the scope of any such action would be limited to the ALJ's decision on remand, he could not reassert his non-IDEA arguments in any eventual appeal. Thus, C.W. argues dismissing this appeal would deny him review of the district court's grant of summary judgment against his non-IDEA claims.

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[3] Although the District is a government entity, it also is akin to a private litigant for practical finality purposes because the IDEA empowers the District to seek judicial review in the district court if it is "aggrieved by the findings and decision made" by the ALJ. 20 U.S.C. § 1415(i)(2).

C.W.'s argument fails because the district court's "Final Judgment" label was inaccurate. The district court may enter final judgment only after the administrative remand concludes and it has adjudicated any appeal by C.W. and/or the District of the ALJ's decision on remand. Once the district court enters a proper final judgment, all interlocutory orders, including summary judgment on the non-IDEA claims, will merge into it. *See McBride v. CITGO Petroleum Corp.*, 281 F.3d 1099, 1104 (10th Cir. 2002). C.W. thus will be able to appeal the district court's summary judgment ruling. *See Zinna v. Congrove*, 755 F.3d 1177, 1181 (10th Cir. 2014) (citing Fed. R. App. P. 4(a)(1)(A)) (time for appeal runs from date of final decision). If, having then properly acquired appellate jurisdiction from a final decision, we decide in favor of C.W. on his non-IDEA claims, we would remand to the district court for further proceedings on those claims, including a possible damages award if C.W. prevails.

We thus lack appellate jurisdiction over the appeals and cross-appeal under the practical finality rule.

III. **CONCLUSION**

Applying the administrative remand rule, we dismiss this appeal for lack of jurisdiction. We remand to the district court with instructions to vacate the "Final Judgment" and stay this action pending the administrative remand. *See Shapiro*, 152 F.3d at 1161 (9th Cir.) (in a similar appeal in the IDEA context involving an administrative remand, vacating the district court's improper final judgment and requiring it to enter a stay); *see also United States v. Mich. Nat'l Corp.*, 419 U.S. 1, 4-5 (1974) (per curiam) ("[W]hen the resolution of a claim cognizable in a federal court must

await a determination by an administrative agency having primary jurisdiction," the default rule is to stay the action, and "[d]ismissal rather than a stay has been approved where there is assurance that no party is prejudiced thereby.").

Entered for the Court,

Per Curiam

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RE: 19-1407, 19-1429, 20-1305, C.W. v. Denver County School District
Dist/Ag docket: 1:17-CV-02462-MSK-SKC

Dear Counsel:

Enclosed please find a published order issued today by the court.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of the Court

cc: Selene A Almazan-Altobelli
Ellen M. Saideman

CMW/lg