FILED
United States Court of Appeals
Tenth Circuit

August 1, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DEBRA HATTEN-GONZALES, individually and on behalf of all others similarly situated,

Plaintiffs - Appellees,

v.

DAVID R. SCRASE, Secretary of the New Mexico Human Services Department,

Defendant - Appellant.

No. 22-2115
(D.C. No. 1:88-CV-00385-KG-GBW)
(D. N.M.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **EID**, Circuit Judges.**

This interlocutory appeal stems from a long-running class action suit challenging the State of New Mexico's administration of federal social benefits programs. The State seeks review of a district court order interpreting an injunction. Because the challenged

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** 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.

order neither modified or expanded the injunction nor altered the parties' legal relationship, we lack jurisdiction under 28 U.S.C. § 1292(a)(1) and dismiss this appeal.

I. BACKGROUND

A. *Class Action and Consent Decree*

In 1988, Debra Hatten-Gonzales sued the Secretary of the New Mexico Human Services Department under 42 U.S.C. § 1983 to challenge how the State processed applications for the Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, and other federal benefits. *See* Aplt. App., Vol. I at 75-90; *Hatten-Gonzales v. Earnest*, 688 F. App'x 586, 587 (10th Cir. 2017) (unpublished); *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1161 (10th Cir. 2009) (unpublished). The district court certified a class of benefits applicants. *Hatten-Gonzales,* 688 F. App'x at 587. The parties settled. The resulting consent decree specified how the State must process applications. *Id.* In 1998, the district court modified the consent decree and adopted it as an injunction. *See Hatten-Gonzales*, 579 F.3d at 1169. In 2018, the court again modified the consent decree.

The current consent decree requires the State to follow federal laws and guidelines regarding benefit application processing timelines. It provides that a case file review is "necessary to measure compliance . . . and to verify that systemic or programmatic barriers to proper application determinations and access to benefits do not exist within [the State's] application processing practices." Aplt. App., Vol. I at 110. The State must periodically permit a case file review for benefits programs based on a statewide representative sample.

The State complies when the case file review reveals no "systematic or programmatic barriers" to benefits access. *Id.* at 111-12. The consent decree defines "systemic or programmatic barrier" as a "policy or prevalent practice implemented at one or more of the Income Support Division offices that results in the failure to comply with federal law in the SNAP and/or Medicaid program and is not due to an isolated event or action." *Id.* at 104.

B. ***The District Court Order***

On July 25, 2022, the special master who had been appointed to administer the consent decree submitted a report to the district court recommending case file review procedures. His report recommended that the case file review cover 288 randomly sampled cases submitted between March and August 2022, including applications that were submitted based on federal government waivers to certain application requirements that were granted due to the pandemic. By contrast, the special master also recommended that the case review sample exclude certain Disaster SNAP applications related to New Mexico wildfires.

The district court adopted the special master's recommendation. It rejected the State's objection that because "pandemic-related federally approved waivers and special circumstances are isolated events and actions . . . under the decree," cases subject to pandemic-related waivers should not be included in the sample universe. Aplee. App., Vol. II at 440. The court said:

> Defendant suggests that "processing of cases under pandemic-related federally approved waivers and special circumstances are isolated events and actions and under the decree cannot be

> considered in the assessment of systemic or programmatic barriers." Pursuant to the Special Master's recommendation, the Court agrees that Disaster SNAP applications and case actions, related to the New Mexico wildfires, should and will be excluded from the sample universe. However, the Court does not accept the assertion, after more than two years of pandemic related waivers, that such waivers equate to "isolated events and actions." To grant Defendant's request on this point would render the case review process largely, if not wholly, moot. For these reasons, the Court overrules this objection.

Id. at 450 (citations omitted).

C. ***Appeal and District Court Motions***

The State appealed under 28 U.S.C. § 1292(a)(1), seeking "review of an interlocutory order modifying an injunction." Aplt. Br. at 4. It then moved in district court to stay proceedings there during the appeal. Granting the motion in part and denying it in part, the court certified the appeal was frivolous as to any matter unrelated to the case review. The State next moved the district court to dismiss for lack of Article III jurisdiction, arguing that a "viable class no longer exists . . . ." Aplee. App., Vol. II at 455. That issue is pending in the district court.

II. **DISCUSSION**

A. ***Legal Background***

We generally review only final decisions of the district courts. *See* 28 U.S.C. § 1291. "There are, of course, several exceptions to the finality rule." *Hatten-Gonzales*, 579 F.3d at 1165. We have jurisdiction to review "[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1).

"[T]he appellant . . . bears the burden of establishing our appellate jurisdiction." *Est. of Ceballos v. Husk*, 919 F.3d 1204, 1223 (10th Cir. 2019).

"Section 1292(a) was intended to carve out only a limited exception to the final-judgment rule of 28 U.S.C. § 1291 and the long-established policy against piecemeal appeals." *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 477 F.3d 1151, 1153 (10th Cir. 2007) (quotations omitted). "Consequently, the Supreme Court has cautioned that the statute should be narrowly construed to ensure that appeal as of right under § 1292(a)(1) will be available only in limited circumstances." *Id.* (quotations and alterations omitted).

"[U]nless a district court order addressing an existing injunction substantially and obviously alters the parties' pre-existing legal relationship, as set forth in the existing injunction, the order is an unappealable interpretation or clarification of the prior order." *Pimentel*, 477 F.3d at 1154 (quotations omitted). "Whether an order interprets or modifies an injunction is determined by its actual, practical effect." *Id.*; *see also Fed. Trade Comm'n v. Zurixx*, 26 F.4th 1172, 1176 (10th Cir. 2022) ("We consider the substance rather than the form of the order to determine whether it falls within the scope of § 1292." (quotations omitted)).

"An interpretation or clarification does not alter the status of the parties, but merely restates that relationship in new terms, while a modification either alters the legal relationship between the parties or substantially changes the terms and force of the injunction." *Pimentel*, 477 F.3d at 1154 (citations and quotations omitted). "To change the legal relationship of the parties, the order must change the command of the earlier

injunction, relax its prohibitions, or release any respondent from its grip." *Id.* (quotations omitted).

B. ***Application***

The State challenges the district court's rejection of its argument that the federal pandemic waivers constituted an "isolated event or action" warranting exclusion of pandemic-waiver cases from the case file review. Aplee. App., Vol. II at 450. We reject this challenge. The State has failed to show we have § 1292(a)(1) jurisdiction.

The district court did not expand or modify the injunction. Its determination that the federal pandemic waivers were not an "isolated event or action" was a reasonable interpretation of the consent decree. The court did not "alter the status of the parties, but merely restate[d] th[eir] relationship in new terms." *Pimentel*, 477 F.3d at 1154 (quotations omitted). The court did not change the consent decree's compliance mandates, enforcement mechanisms, or otherwise alter "the command of the earlier injunction, relax its prohibitions, or release any respondent from its grip." *Id.* (quotations omitted).

III. CONCLUSION

Because we lack interlocutory jurisdiction under § 1292(a)(1) to review the district court's order, we dismiss this appeal.[1]

Entered for the Court

Per Curiam

[1] The State argues the Appellees lack Article III standing. *See* Aplt. Br. at 11-20. Because we dismiss for lack of appellate jurisdiction, and because the State's standing arguments are pending in district court, we do not address this issue.