

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 28, 2026

Christopher M. Wolpert
Clerk of Court

ERIK M. UNDERWOOD, a Colorado
citizen,

Plaintiff - Appellant,

and

MY24HOURNEWS.COM, INC.,
a Colorado corporation,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,
a Delaware corporation,

Defendant - Appellee.

No. 25-1248
(D.C. No. 1:18-CV-02329-RM-CYC)
(D. Colo.)

ORDER AND JUDGMENT*

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

This matter comes before the court on our order directing Appellant Erik Underwood to show cause why this appeal should not be dismissed for lack of

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

appellate jurisdiction, the parties' responses to that order, and appellee Bank of America's motion to dismiss. For the reasons below, we dismiss this appeal for lack of jurisdiction.

I.

This case dates to 2018, when Mr. Underwood and a business entity affiliated with him sued Bank of America (BOA) for trademark infringement. Those claims were fully adjudicated in BOA's favor, in district court and in two prior appeals.¹

Mr. Underwood now appeals from the district court's order of June 18, 2025, which addressed numerous post-judgment motions and disputes. As relevant here, the matters addressed in that order included multiple motions filed by BOA arguing Mr. Underwood had violated a protective order. The protective order, which the district court entered early in the case, restricted the parties' use and disclosure of documents designated as confidential when produced in discovery. In a series of motions filed from July 2024 through April 2025, BOA argued Mr. Underwood had violated that order by improperly disclosing documents BOA had designated as confidential by publicly filing those documents in legal proceedings he had initiated against BOA or its executives and lawyers.

¹ See *Underwood v. Bank of Am. Corp.*, 996 F.3d 1038 (10th Cir. 2021) (affirming summary judgment for BOA on all but one claim, which was remanded); *Underwood v. Bank of Am. Corp.*, No. 22-1402, 2024 WL 1670592 (10th Cir. Apr. 18, 2024) (unpublished) (affirming judgment for BOA on the one remanded claim), *cert. denied*, 145 S. Ct. 439 (2024).

Among other matters, the district court's June 18, 2025 order addressed three separate motions filed by BOA seeking relief for Mr. Underwood's protective order violations.

First, it overruled Mr. Underwood's objections to a magistrate judge's order awarding BOA \$84,744 in attorneys' fees incurred in connection with two identified protective order violations, namely Mr. Underwood's filing of confidential-designated documents in state court proceedings in Georgia and Arizona.

Second, the district court's order overruled Mr. Underwood's objections to a later magistrate judge's order that granted in part a motion to compel filed by BOA. That order had directed Mr. Underwood to comply with an earlier order which had been entered to help determine the scope of his protective order violations. It required him to identify all proceedings he had initiated against BOA and produce all documents he had submitted to support those proceedings.

Third, the district court's June 18, 2025 order ruled on an additional motion for sanctions, which had not been referred to a magistrate judge. This most recent motion was based on Mr. Underwood's additional or ongoing violations of the protective order, including his filing of BOA's confidential-designated documents in the Georgia Supreme Court and with the Trademark Trial and Appeal Board. The district court granted this additional motion for sanctions. Among other relief, it granted an additional award of attorneys' fees. But the district court's order did not fix the amount of this additional fee award and directed BOA to file a supplemental fee request.

Mr. Underwood appealed from this June 18, 2025 order.²

II.

This court has “limited subject-matter jurisdiction,” and “may only hear cases when empowered to do so by the Constitution and by act of Congress.” *Shields L. Grp., LLC v. Stueve Siegel Hanson LLP*, 95 F.4th 1251, 1279 (10th Cir. 2024) (internal quotation marks omitted). Under 28 U.S.C. § 1291, we have jurisdiction to hear “appeals from all final decisions of the district courts.” A district court’s decision is considered “final” under § 1291 only when it “ends litigation on the merits and leaves nothing for the district court to do but execute the judgment.” *Rodriguez v. IBP, Inc.*, 243 F.3d 1221, 1227 (10th Cir. 2001). Accordingly, “[a]n award of attorneys’ fees is not final and appealable within the meaning of 28 U.S.C. § 1291 *until it is reduced to a sum certain.*” *Am. Specialty Ins. Co. v. Britt Paulk Ins. Agency, Inc.*, 579 F.3d 1106, 1108 n.2 (10th Cir. 2009) (emphasis added) (internal quotation marks omitted).

² Mr. Underwood filed two notices of appeal, both captioned as “Appeal[s] to the United States Court of Appeals for the *Federal Circuit*.” R. vol. 5 at 104–06, 107–09 (emphasis added). The Federal Circuit opened an appeal but later dismissed it for lack of jurisdiction. *See Underwood v. Bank of Am. Corp.*, No. 2025-1892, 2025 WL 2803633, at *1 (Fed. Cir. Sept. 30, 2025) (unpublished).

In its motion to dismiss, BOA argues we should dismiss this appeal because Mr. Underwood intended to appeal only to the Federal Circuit, not to this court. But given the Federal Circuit’s observation that it might otherwise have transferred its case to this court but saw no need to do so because this appeal was already docketed, *see id.* at *1, we will treat this appeal as properly docketed, regardless of which court Mr. Underwood originally intended to appeal to.

As indicated in our show-cause order and argued in BOA’s motion to dismiss, the district court’s June 18, 2025 order is not a final decision within the meaning of § 1291 because it granted an award of attorneys’ fees without reducing the amount of that award to a “sum certain,” which remains to be determined. *N. Am. Specialty*, 579 F.3d at 1108 n.2. We therefore do not have jurisdiction under § 1291 to review the district court’s order.

Mr. Underwood has not identified any other basis for appellate jurisdiction, including in his responses to our show-cause order and BOA’s motion to dismiss.³ *See Est. of Ceballos v. Husk*, 919 F.3d 1204, 1223 (10th Cir. 2019) (“[T]he appellant . . . bears the burden of establishing our appellate jurisdiction.”). Much of his briefing relates to the merits of his underlying claims. But those claims have been adjudicated; they do not show we have jurisdiction here. He also challenges the basis of the district court’s sanctions rulings. But unless and until the district court has entered a final decision, we do not have jurisdiction to review those rulings or address whether the district court erred.

Mr. Underwood also asserts that the district court’s June 18, 2025 order “was a complete, standalone ruling that left no issues pending except for the ministerial calculation of a sum certain for fees.” Dkt. No. 21 at 9. But his statement effectively concedes our lack of jurisdiction, because our controlling precedent is clear that the

³ Because Mr. Underwood appeals pro se, we construe his filings liberally, but we will not act as his advocate or construct arguments on his behalf. *See Adams v. Fed. Aviation Admin.*, 168 F.4th 1271, 1282 (10th Cir. 2026).

district court's award of attorneys' fees is *not* final and appealable under § 1291 until the amount of the fee award is set, even if Mr. Underwood considers that calculation ministerial. *See N. Am. Specialty*, 579 F.3d at 1108 n.2.

Mr. Underwood's assertion that we have jurisdiction under the collateral order doctrine to review those portions of the district court's June 18, 2025 order that denied his motions to disqualify BOA's counsel and the district judge are also unavailing. We have clearly held that "[a]n order denying a motion to recuse or disqualify a judge is interlocutory, not final, and is not immediately appealable." *In re Am. Ready Mix, Inc.*, 14 F.3d 1497, 1499 (10th Cir. 1994); *see also Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981) ("[A] district court's order denying a motion to disqualify counsel is not appealable under § 1291 prior to final judgment in the underlying litigation.").

Finally, even if the district court finally resolved some matters (such as the previously fixed award of attorneys' fees), that does not make its order final and appealable under § 1291 where it explicitly required further proceedings in district court on other matters (particularly, the additional award of a not-yet-determined amount of attorneys' fees related to additional or ongoing protective order violations). *See Crystal Clear Commc'ns, Inc. v. Sw. Bell Tel. Co.*, 415 F.3d 1171, 1177 n.4 (10th Cir. 2005) ("To be final, a decision must reflect the termination of all matters as to all parties and causes of action." (internal quotation marks omitted)).

III.

For the reasons above, we dismiss this appeal for lack of jurisdiction.

We rule on the pending motions as follows:

1. We grant BOA's motion to dismiss (Dkt. No. 17).
2. We deny Mr. Underwood's "Cross-Motion for Sanctions and to Disqualify Appellee's Counsel" (Dkt. No. 22) and his "Second Cross-Motion for Sanctions" (Dkt. No. 32).
3. We deny as moot Mr. Underwood's motion for us to take judicial notice of the record in his appeal to the Federal Circuit (Dkt. No. 45).
4. We deny Mr. Underwood's "Expedited Motion to Disqualify Counsel . . . and Request for Stay Pending Supreme Court Review" (Dkt. No. 72).
5. BOA's motions to seal documents included in volumes five and six of the record on appeal (Dkt. No. 23) and documents filed by Mr. Underwood (Dkt. Nos. 28, 38, 41, 50 and 63) are granted to the extent the Clerk is directed to publicly file the redacted copies of the documents proffered with BOA's motions as attachments to the supplemental record and Mr. Underwood's filings, respectively. The unredacted copies will remain sealed. We deny without prejudice BOA's request to enjoin Mr. Underwood from filing any documents that are not sealed (also Dkt. No. 50).

Entered for the Court

Allison H. Eid
Circuit Judge