

IN THE SUPREME COURT, STATE OF WYOMING

2018 WY 126

October Term, A.D. 2018

November 21, 2018

MICHEL SKAF, M.D.,

**Appellant
(Defendant),**

v.

**WYOMING CARDIOPULMONARY
SERVICES, P.C., a Wyoming
corporation,**

**Appellee
(Plaintiff).**

S-18-0242

ORDER GRANTING MOTION TO DISMISS APPEAL

This matter came before the Court upon “Appellee’s Motion to Dismiss,” e-filed herein October 30, 2018. After a careful review of the motion to dismiss, “Appellee’s Brief in Support of its Motion to Dismiss,” the materials attached thereto, “Appellant’s Response to Motion to Dismiss,” the materials attached thereto, and the file, this Court finds the motion to dismiss should be granted. This Court concludes the district court’s “Order and Judgment” is not a final appealable order, because Appellee’s injunction claim has not been finally resolved.

As noted in Appellant’s Response, the district court consolidated two actions: (1) Appellee’s “Complaint for Declaratory Judgment and Injunctive Relief”; and (2) the petition and cross-petition to confirm, vacate, and/or modify the arbitrators’ decision. Upon motion, the district court consolidated the two actions, “creating a single action.”

This Court has written the following about consolidation:

the word ‘consolidation’ has different connotations. One of these, which actually is not a consolidation, but is described as such, occurs when all but one of several pending actions are stayed until the trial of the one not stayed, it being determinative as to the others; the second connotation describes the instance in which several actions are combined into one action, lose their separate identity as such, and become a single action in which a single judgment is rendered; and the third

connotation describes an instance in which several actions are tried together, but retain their separate character and require the entry of separate judgment. 9 Wright and Miller, Federal Practice and Procedure, s 2382, p, 254 (1971). While both the second and third types of consolidation are contemplated by the language of Rule 42 of the Federal Rules of Civil Procedure and Rule 42 of the Wyoming Rules of Civil Procedure, it appears that historically the courts have recognized only the third style of consolidation. *****

Bard Ranch, Inc. v. Weber, 538 P.2d 24, 39-40 (Wyo. 1975).

This Court concludes the district court's consolidation order effectuated a consolidation of the second type. The two actions were combined into one action, those actions lost their separate identity, and there will be one final judgment.

Given the effect of the consolidation order ("creating a single action"), this Court concludes the "Order and Judgment" is not a final appealable order, because the order does not determine the action or "resolve all outstanding issues." *In re KRA*, 2004 WY 18, ¶ 10, 85 P.3d 432, 436 (Wyo. 2004); W.R.A.P. 1.05(a). It is clear Appellee's injunction claim has not been resolved. It is, therefore,

ORDERED that the Motion to Dismiss, e-filed herein October 30, 2018, be, and hereby is, granted. The captioned appeal is dismissed; and it is further

ORDERED that "Appellant's Motion for Correction or Modification of the Record Pursuant to W.R.A.P. 3.04, and for Extension of Time to Submit the Briefs," e-filed herein November 19, 2018, be, and hereby is, denied as moot.

DATED this 21th day of November, 2018.

BY THE COURT:

/s/

MICHAEL K. DAVIS
Chief Justice