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The Right of Appeal in Wyoming

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THE RIGHT OF APPEAL IN WYOMING

In Wyoming, the right of appeal to the State Supreme Court is limited by the final decision rule which is defined in Wyo. RCP 72 (c) as:

> A judgment rendered or final order made by the district court may be reversed in whole or in part, vacated or modified by the supreme court for errors appearing on the record.[1]

The rendition of a judgment, for appeal purposes, is the entry of judgment and not the judgment itself.[2]

> Although a judgment, upon its rendition, may be final and valid as between the parties, effective for many purposes and even enforceable, the entry thereof is generally held a prerequisite to the right to appeal.[3]

This may be illustrated by the recent case of *Wyoming Farm Bureau Mutual Insurance Company v. Vanelli*[4] decided by the Supreme Court of Wyoming in 1962. At the trial level, the defendant moved for a directed verdict which was sustained. The plaintiff immediately filed an appeal to the Supreme Court. One month later, the trial court made an entry of judgment upon the directed verdict. As the appeal had been taken before the entry of judgment, the Supreme Court dismissed the appeal as it had not been properly taken. Although paradoxical in form, the plaintiff should have moved for an entry of judgment on the directed verdict for the defendant in order to perfect his appeal.

It is readily apparent from the numerous cases on this point which may be found in the digest that this rule has led to considerable confusion in our appeal system. This confusion has arisen because Rule 72 (c) does not conform to the rule as followed by the Supreme Court. It is suggested that the following change be made to Rule 72 (c) to correct this situation: "A judgment *entered* or final order made *and entered* by the district court. . . ." This change will alleviate the above mentioned difficulties.

The other condition upon which an appeal may be taken is a 'final order.' This is defined in Wyoming RCP 72 (a) as:

> An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding, or upon a summary application in an action, after judg-

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1. Wyo. Stat. RCP 72 (c) (1957).
2. Wyoming Farm Bureau Mutual Insurance Company v. Vanelli, ... Wyo. ....., 370 P.2d 738 (1962); Cooley v. Frank, 68 Wyo. 436, 235 P.2d 446 (1951); Lower Auto Supply v. Teton Auto Co., 45 Wyo. 119, 16 P.2d 38 (1932); Block v. Nefsy, 29 Wyo. 33, 207 Pac. 1008 (1922); Hahn v. Citizens' State Bank, 25 Wyo. 467, 171 Pac. 889 (1918); Owen v. Saratoga & E. Ry. Co., 19 Wyo. 409, 118 Pac. 652 (1911); Geenawalt v. Natrona Improvement Co., 16 Wyo. 226, 92 Pac. 1008 (1907); Turner v. Hamilton, 10 Wyo. 177, 67 Pac. 117 (1902); Gramm v. Fisher, 3 Wyo. 595, 29 Pac. 377 (1892); Menardi v. O'Malley, 3 Wyo. 327, 23 Pac. 68 (1890).
3. Hahn v. Citizens' State Bank, supra note 2 at 890.
4. Wyoming Farm Bureau Mutual Insurance Company v. Vannelli, supra note 2.

> ment, is a final order which may be vacated, modified or reversed, as provided in these rules.[5]

Under this definition there are three bases of appeal. The first is ". . . . when such order in effect determines the action and prevents a judgment. . . . it is a final order. . . ." The second is "an order affecting a substantial right, made in a special proceeding. . . ." The third basis is "upon a summary application in an action, after judgment. . . . " A sampling of cases will be used to illustrate how the Supreme Court of Wyoming has interpreted this rule and the numerous difficulties which have arisen in formulating a working doctrine.

The first situation, a ruling which determines an action and prevents judgment, has never been defined by the Supreme Court of Wyoming. It is to be assumed that the language is sufficiently plain and needs no further interpretations. It includes such orders or rulings of the court which result in the complete culmination of the proceedings in that court. For example, a ruling by a district court that they lack jurisdiction in effect completes the action and would be appealable. However, the converse is not true. If a motion is made which, if granted, would determine the action and prevent judgment but is denied, this results in no order which is appealable.[6] This is completely consistent with the theory underlying the final decision rule.

The second appealable situation mentioned in rule 72 (a), an order affecting a substantial right made in a special proceeding, has been defined by the Supreme Court in *Anderson v. Englehart*.[7] The court states that a 'special proceedings' is one that was not defined as an action. It is an application to the court, although attached to a pending action, which does not affect the culmination of the pending action.

> We think that a proceeding may be special, within the meaning of the statute governing appeals, although connected with a pending action, and *there appears to us to be no good reason for denying to a provisional remedy,* which may be disposed of by an order independent of the ultimate determination of the cause, the character of "special proceedings" with respect to what constitutes a final order under the statute. (Emphasis supplied) [8]

What is meant by this definition? It has been held that contempt proceedings against a party to a law suit is independent of the pending action and is a special proceeding.[9]

Further, the Court has declared that the granting by the district court of a temporary injunction or the refusal by the court to dismiss a

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5. Wyo. Stat. RCP 72 (a) (1957).
6. State ex. rel. Bank of Chadron v. District Court of Weston County, 5 Wyo. 277, 39 Pac. 749 (1895).
7. Anderson v. Englehart, 18 Wyo. 196, 105 Pac. 571 (1909).
8. Id. at 575.
9. Porter v. State, 16 Wyo. 136, 92 Pac. 385 (1907); Laramie Nat. Bank of Laramie City v. Steinhoff, 7 Wyo. 464, 53 Pac. 299 (1898).

temporary injunction constitutes a special proceeding.[10] An order dissolving or sustaining an attachment has been held to be a final order in a special proceeding,[11] as has been the appointment or discharge of a receiver.[12]

On the other hand, the Supreme Court has held that in a divorce action, the granting or refusal to grant temporary alimony, support money for the spouse and the child, litigation expense money and reasonable attorney's fees does not constitute a special proceeding.[13] Such an application as this would seem to fit into the definition given in the Anderson case above. It does not impair the decision in the pending action and there is as much financial interest involved as where an injunction has been granted or denied.

The court has also held that the appointment by the court of commissioners to ascertain the value of land in a condemnation proceeding is not a special proceeding.[14]

It would seem, from the above sampling of cases, that the only definitive rule that can be stated as to this aspect of a final order is that a special proceeding exists only if the Supreme Court wishes to hear that type of case.

The Wyoming rule as to appeals before the final order has been rendered in an action is greatly in need of clarification and definition. Many instances where an interlocutory appeal would seem to be beneficial and would speed up the judicial processes are not now allowed. It is suggested that this entire area needs to be revamped. It is suggested that the federal interlocutory procedures,[15] which have proved to be quite workable, be instituted in Wyoming.

The third appealable condition under rule 72 (a), an order upon a summary application in an action, after judgment, is ruled by statute. There are three procedures available in attacking a judgment at the trial level.

The first method is through Rule 50,[16] wherein a party can move for a judgment notwithstanding the verdict within ten days after the jury has been discharged. Any action, either granting or denying the motion will result in a final judgment and is therefore appealable.

Under Rule 50 (b), the party may also move for a new trial. If this is granted, no appeal will be allowed until the completion of the new

10. Supra note 7.
11. Collins v. Stanley, 15 Wyo. 282, 88 Pac. 620 (1907); First Nat'l. Bank of Sundance v. Moorcroft Ranch Co., 5 Wyo. 50, 36 Pac. 821 (1894).
12. Anderson v. Matthews, 8 Wyo. 307, 57 Pac. 156 (1899).
13. Book v. Book, 59 Wyo. 423, 141 P.2d 546 (1943).
14. Big Horn Coal Company v. Sheridan-Wyoming Coal Company, 67 Wyo. 300, 224 P.2d 172 (1950).
15. Fed. Inter. Appeals Act, 23 F.R.D. 199 (1959); 46 A.B.A.J. 681 (1959).
16. Wyo. Stat. RCP 50 (1957).

trial.[17] If the motion for a new trial is denied, there is a split of authority. Some cases hold that this is an appealable event.[18] Another line of reasoning is that the appeal is upon the judgment as originally entered and not upon the action taken on the motion for a new trial. The appeal, therefore, must come within the prescribed time for appeal counting from the judgment, whenever it has been entered, and not from the granting or denying of the motion.[19] However, the court has also held that a judgment does not become final until an application or motion for a new trial has been decided.[20]

Another procedure is provided by Rule 50 (c). The court could grant a judgment notwithstanding the verdict and a conditional new trial if the Supreme Court should reverse the judgment n.o.v. Both of these orders have been expressly made appealable.

The second general method of attacking the judgment is through Rule 60.[21] A motion under this rule may be within one year of the judgment from which relief is sought. If the motion is sustained, a new judgment will arise which will be appealable. However, the rule states that "a motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation."[22] Under Rule 73 (a)[23] an appeal must be filed within thirty days of the final judgment. Therefore, if Rule 60 is used after the thirty day period and the motion is denied, it is probably not appealable.

The third general method of attacking a judgment is through Section 1-325,[24] which is still in force under the Rules. This method is used after the term of the court has concluded in which the judgment was entered. It is an entirely new action from which any order is a final order and may be appealed.[25] This is commonly known as an action to vacate judgment.

From the above sampling of cases, it can be seen that a logical and consistent meaning cannot be given to much of the doctrine of the Wyoming final decision rule. It is suggested that the rule be modified in order to make it more definite and predictable. The Rules of Civil Procedure are not final and fixed, but are living. They must be continually scrutinized and improved in order to better satisfy the goal of a speedy, inexpensive, and just adjudication of rights.

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17. Flint v. Voiles, 50 Wyo. 43, 58 P.2d 443 (1936); Kahn v. Traders' Ins. Co., 4 Wyo. 419, 34 Pac. 1059 (1893). But see Allen v. Lewis, 26 Wyo. 85, 177 Pac. 433 (1919).
18. Edwards v. O'Brien, 2 Wyo. 493 (1882).
19. Mitter v. Black Diamond Coal Co., 27 Wyo. 72, 193 Pac. 520 (1920).
20. Luther Lumber Co. v. Sheddahl Savings Bank, 22 Wyo. 302 139 Pac. 433 (1914).
21. Wyo. Stat. RCP 60 (1957).
22. Wyo. Stat. RCP 60 (b) (1957).
23. Wyo. Stat. RCP 73 (a) (1957).
24. Wyo Stat. § 1-325 (1957).
25. Bales v. Brome, 56 Wyo. 111, 105 P.2d 568 (1940); Mitter v. Black Diamond Coal Co., supra note 20.