Get Ya Final Judgment! Arizona Supreme Court Clarifies Rule 54(c)'s Certification of Finality Requirement by Amendment

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It wouldn't be a new year without a new development in the law that alters or affects the factors that Arizona attorneys must consider in assessing whether an order of the superior court is a "final judgment." The most recent development in this arena is the promulgation of amended Arizona Rule of Civil Procedure 54(c) effective January 1, 2017. Rule 54(c) as amended marks the end for a mistaken construction of the original rule's certification of finality requirement—a construction that began to take root soon after the rule took effect three years ago. Given the importance of this clarification to an area of the law that presents more than its fair share of traps for the unwary, we ring in 2017 by addressing the amended rule here.

Rule 54(c)'s noble goal

The issue of finality is anything but trivial. The Arizona Court of Appeals derives its appellate jurisdiction exclusively from state statutes.1 and the statutes say that, with the exception of a handful of unique and comparatively rare types of trial court orders, an appeal may be taken only from a "final judgment."2 In keeping with that directive, the Arizona Rules of Civil Procedure authorize the superior courts to enter two types of final judgments: (1) those as to "all claims and parties[,]"3 and (2) those as to "one or more but fewer than all of the claims or parties."4

With respect to the first category, it became a jurisdictional prerequisite upon the promulgation of Rule 54(c) effective January 1, 2014, that "the court states that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c)."5 Put differently, in the absence of the finality certification by the superior court, an order resolving all claims and parties would not be deemed final and thus appealable, according to the rule. The rule was "designed to make clear 'whether an order of a Superior Court is, or is intended to be, a final, appealable "judgment"' and to facilitate 'determining the extent to which a putative judgment resolves a case as to all claims and all parties.'"6

Where things went awry

Despite its admirable purpose, the mandatory certification requirement of Rule 54(c) quickly became a matter of controversy. Although many lawyers surmised that the certification of finality had to be placed within the body of the judgment itself, Division 1 cast doubt on that reading of the rule in *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*: "Although Rule 54(c) does not expressly require that the statement appear in the text of the judgment, *and although the statement could appear in a minute entry or hearing transcript*, the better practice is to include in the judgment itself the statement that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c)."7

Why Division 1 elected to include the foregoing passage in its published decision is unclear. First, the judgment appealed from in *Madrid* did not omit the requisite finality certification. Thus, the issue of whether an order would be deemed a final judgment if the superior court expressed the magic language someplace else was not even before the Court. Second, it is established that although Rule 54(b)—Rule 54(c)'s older sister—does not say so explicitly, the finality certification required under that rule has to be included in the body of the judgment in order to render the judgment final and thus appealable. *Madrid* offered no rationale for construing the two rules differently. Third, the approach advanced in *Madrid* was bound to leave parties searching for a finality certification not only in other orders of the superior court but also in hearing transcripts, with all the disagreements and uncertainties that could be expected to arise in such circumstances. This would hardly advance Rule 54(c)'s purpose of making clear whether an order is, or is intended to be, a final judgment.

In spite of its status as dicta and the other problems outlined above, the statement in *Madrid* regarding the propriety of placing the certification of finality in a minute entry or even in a hearing transcript promptly wound its way into many Arizona litigation practice guides.

Amended Rule 54(c) should end the certification placement controversy

Perhaps in reaction to the dicta in *Madrid*, an amended version of Rule 54(c) was adopted effective January 1, 2017. The amended rule provides that "[a] judgment as to all claims and parties is not final unless the *judgment* recites that no further matters remain pending and that the judgment is entered under Rule 54(c).[8] Thus, by its terms, Rule 54(c) as amended makes it explicit that the certification of finality must appear in the text of the putative judgment itself. Notably, the Arizona Supreme Court apparently does not view the new language of Rule 54(c) to effect a substantive change to the rule's certification requirement. We infer this from the accompanying comments to the 2017 amendments, which begin by characterizing the changes to those parts of Rule 54 that are not subsequently addressed in the comments as "stylistic and organizational."

Additional observations and predictions

It is important to recognize that, although placement of Rule 54(c)'s mandatory certification in the body of a judgment is a jurisdictional prerequisite to appeal, a certification alone cannot transform a putative judgment that fails to resolve all claims and parties into a "final judgment."[9] If any claim remains pending, the putative judgment is not final and appealable (unless, of course, it contains a *Rule 54(b)*-compliant certification and otherwise meets the substantive requirements of that provision). We anticipate seeing more cases involving a disconnect between the certification of finality found in the judgment, on the one hand, and the nature of the decision itself, on the other, hit the appellate court docket in 2017.

Nor would we be surprised to learn—in light of the dicta in *Madrid*—of the pendency of appeals or even the issuance of appellate decisions arising out of putative final judgments that, although entered between January 1, 2014, and December 31, 2016, did not bear the mandatory Rule 54(c) certification of finality. It will be interesting to observe how the Arizona Court of Appeals will address any such jurisdictional infirmity in the coming months.

1. Ariz. Const. art. 6 § 9; *Garza v. Swift Transp. Co., Inc.*, 222 Ariz. 281, 283 ¶ 12, 213 P.3d 1008 (2009)
2. A.R.S. § 12-2101(A)(1) (emphasis added)
3. Ariz. R. Civ. P. 54(c) (2017)
4. Ariz. R. Civ. P. 54(b) (2017)
5. Ariz. R. Civ. P. 54(c) (2016)
6. *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 421, ¶ 6, 380 P.3d 659, 665, 2016 WL 4045308 (App. 2016), *opinion after reinstatement of appeal sub nom. Riverbend Homeowners Ass'n v. Edwards*, 1 CA-CV 15-0513, 2016 WL 7209658 (App. Dec. 13, 2016) (*quoting Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. at 223 ¶ 4, 338 P.3d 328 (App. 2014))
7. 236 Ariz. at 224, ¶ 5, 338 P.3d at 331
8. Ariz. R. Civ. P. 54(c) (2017)
9. *Madrid*, 236 Ariz. at 224, ¶ 6, 338 P.3d at 331.