

APPELLATE

MARCH

2018

A L E R T

SUPREME COURT HOLDS THAT CONSOLIDATED CASES RETAIN THEIR INDEPENDENCE FOR PURPOSES OF APPEAL

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In a unanimous opinion reversing a prior decision of the Third Circuit, the Supreme Court has held that individual federal cases consolidated for trial or other purposes under Rule 42(a) of the Federal Rules of Civil Procedure retain their independent character for purposes of appealing a final judgment (*Hall v. Hall*, No. 16-1150 [U.S. Mar. 27, 2018]). As a result, when a final judgment is entered in one of the cases, an appeal can be filed from that final judgment even if another case consolidated with it remains pending in the district court.

In *Hall*, a trial court had consolidated two related cases, both involving a dispute between siblings. After a final judgment was entered in one case, but not the other, the losing party appealed that final judgment to the Third Circuit. That court dismissed the appeal for lack of jurisdiction, holding that a final decision in one case that had been “consolidated for all purposes” with another case that remained pending in a trial court was not appealable.

In reversing, the Supreme Court held that “one of multiple cases consolidated under [Rule 42(a)] retains its independent character, at least to the extent it is appealable when finally resolved, regardless of any ongoing proceedings in the other cases.” As the Court explained, “when one of several consolidated cases is finally decided, a disappointed litigant is free to seek review of that decision in the court of appeals.”

The Court reached this conclusion by relying on the 125-year history of federal-court consolidation prior to adoption of the Federal Rules of Civil Procedure in 1938. That history included almost-universal interpretation of “consolidation” as not destroying individual cases’ separate character. The Court found no indication that the codification of consolidation authority in the Federal Rules was intended to change this longstanding practice.

Federal-court litigants in consolidated matters should take note of this decision, as it not only *permits* a disappointed litigant to appeal a final judgment in one of multiple consolidated cases, but almost certainly *requires* the litigant to do so within the time for taking such an appeal (usually, but not always, thirty days after entry of final judgment). Failure to do so likely will result in forfeiture of the right to ever take such an appeal, even after the remaining consolidated cases conclude. ♦

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