

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 7, 2019

Elisabeth A. Shumaker
Clerk of Court

STATE OF OKLAHOMA EX REL MIKE
HUNTER, in his official capacity as
Attorney General of Oklahoma,

Plaintiff - Appellant,

and

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, et al.,

Consolidated Plaintiffs - Appellants,

v.

No. 19-5055

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants Consolidated Defendants –
Appellees,

and

L.E.A.D. AGENCY, INC., et al.,

Intervenor Consolidated Defendants –
Appellees.

AMERICAN FARM BUREAU
FEDERATION, et al.,

Amici Curiae.

ORDER

Before **MATHESON** and **PHILLIPS**, Circuit Judges.

This matter is before the court on the parties' Joint Motion to Hold Case in Abeyance (the "Motion"). This appeal is from a district court order denying the plaintiffs' motions to preliminarily enjoin enforcement of an agency rule. Final judgment has not been entered, but a statutory exception to the final judgment rule allows a party to seek interlocutory appellate review of an order like the one being appealed here. 28 U.S.C. § 1292(a)(1). The statutory exception implies an urgent need for immediate appellate review of the district court's order. With this background in mind, the nature of this appeal is incompatible with the indefinite abatement based the parties have requested. Consequently, the Motion is denied.

The parties have raised an issue that this court would like to investigate further, however. The agency filed in the district court a document titled "Notice of Final Rule." (Dist. Ct. Docket No. 127.) The notice advised that the agency has "signed" a final rule that "rescinds the regulation at issue" and "re-codifies the prior regulatory definition" of a term that appears to be at the heart of the dispute. If the agency has issued a final rule repealing the rule being challenged in this case, then it appears that this interlocutory appeal of an order denying the plaintiffs' requests to enjoin enforcement of that rule on a preliminary basis may be moot. Therefore, within 14 days of the date of this order, we direct the parties to file simultaneous memorandum briefs addressing whether this appeal should be dismissed because the appeal has become moot. *See* 10th Cir. R. 27.3(B)

(discussing requirements for memorandum briefs when court raises potential of summary disposition on specific dispositive issue).

For clarification, “parties” as that term is used in this order means “appellants” and “appellees.” Unless it is not feasible to do so, the parties on the same side in this appeal should file a single memorandum brief, signed by counsel for all parties on that side. The parties may file a joint memorandum brief in response, if appropriate.

Briefing on the merits in this appeal is tolled pending further order of this court.

10th Cir. R. 27.3(C).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk