

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50605

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2019

Lyle W. Cayce
Clerk

SENTRY SELECT INSURANCE COMPANY,

Plaintiff - Appellant

v.

CHRISTIAN ULISES RUIZ; RUDOLPH CHEVROLET, L.L.C.; RUDOLPH
AUTOMOTIVE, L.L.C., doing business as Rudolph Mazda; MARCELO
FLORES; LYNN CRAWFORD,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:16-CV-376

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:*

In this insurance-coverage dispute, Sentry Select Insurance Company seeks a declaratory judgment that it owed Rudolph Chevrolet and Rudolph Automotive no duty to defend or indemnify them in connection with a Texas state-court action filed by a Rudolph employee. After the parties filed joint stipulations of fact and a joint motion to try the case on submission, the district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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court entered Findings of Fact and Conclusions of Law. The district court held that Sentry had a duty to defend the Rudolph entities, but deferred decision on the duty to indemnify, administratively closing the case pending conclusion of the state-court litigation.

“Usually, this court only has jurisdiction over appeals from final orders, and may raise the issue of jurisdiction sua sponte.”¹ “A ‘final decision’ generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”² In contrast, “a district court order staying and administratively closing a case lacks the finality of an outright dismissal or closure.”³ By administratively closing the case, the district court retains jurisdiction,⁴ meaning it can “reopen the case—either on its own or at the request of a party—at any time.”⁵ “[R]eservation of jurisdiction for the purpose of hearing substantive claims . . . precludes appellate jurisdiction because an order framed this way is not a final judgment.”⁶ In the absence of an exception to the final judgment rule, the court is without jurisdiction.⁷ The appellant

¹ *Sw. Elec. Power Co. v. Certain Underwriters at Lloyds of London*, 772 F.3d 384, 386 (5th Cir. 2014).

² *Catlin v. United States*, 324 U.S. 229, 233 (1945).

³ *Sw. Elec. Power Co.*, 772 F.3d at 387.

⁴ *Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) (“Dismissals end all proceedings, at which time the district court relinquishes any jurisdiction over the matter. By contrast, administrative closings do not end the proceeding. Rather, they are a practical tool used by courts to prune . . . overgrown dockets and are particularly useful in circumstances in which a case, though not dead, likely to remain moribund for an appreciable period of time.” (internal quotation marks and citations omitted)).

⁵ *Id.*

⁶ *Int’l Ass’n of Machinists & Aerospace Workers Local Lodge 2121 AFL-CIO v. Goodrich Corp.*, 410 F.3d 204, 209 (5th Cir. 2005).

⁷ *Salinas v. Univ. of Texas-Pan Am.*, 268 F.3d 1063 (5th Cir. 2001); *see also Essex Ins. Co. v. Long Island Owners Ass’n, Inc.*, 379 F. App’x 442, 424 (5th Cir. 2010) (unpublished) (finding no final order in appeal from similar order); FED. R. CIV. P. 54(b).

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bears the burden of establishing appellate jurisdiction, “and there is no need to explore jurisdictional bases the appellant does not address.”⁸

Sentry asserts that we have jurisdiction to review the district court’s deferral of judgment as to indemnification, citing *Northfield Insurance Company v. Loving Home Care Incorporated*. In that case, an insurer sought a declaratory judgment that it had no duty to defend nor to indemnify an insured home-care company in an underlying state-court tort suit.⁹ The district court held that the insurer had a duty to defend; because the underlying state-court suit was ongoing, however, the court dismissed the indemnification claim without prejudice.¹⁰ Unlike in *Northfield*, however, Sentry’s indemnification claim is deferred and unresolved, and the district court administratively closed the case, retaining jurisdiction. Accordingly, the district court’s order is interlocutory and we lack jurisdiction under 28 U.S.C. § 1291 to entertain Sentry’s appeal. The district court did not certify its duty-to-defend decision under Federal Rule of Civil Procedure 54. Sentry does not raise another jurisdictional basis for an interlocutory appeal.

We DISMISS Sentry’s appeal for lack of appellate jurisdiction.

⁸ *SCF Waxler Marine, L.L.C. v. ARIS T M/V*, 902 F.3d 461, 464 (5th Cir. 2018).

⁹ *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523, 525–27 (5th Cir. 2004).

¹⁰ *Id.* at 527.