IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

PACHIRA ENERGY, LLC,
Plaintiff Below, Petitioner

v.) No. 26-ICA-294 (Cir. Ct. Monongalia Cnty. Case No. CC-31-2018-C-369)

NORTHEAST NATURAL ENERGY, LLC,
and NNE WATER SYSTEMS, LLC,
Defendants Below, Respondents

MEMORANDUM DECISION

Petitioner Pachira Energy, LLC ("Pachira") appeals two orders of the Circuit Court of Monongalia County entered on June 10, 2025, and June 17, 2026. The June 10, 2025, order granted declaratory judgment in favor of Respondents Northeast Natural Energy, LLC and NNE Water Systems, LLC (collectively "Northeast") in regard to two of Northeast's counterclaims asserted against Pachira. The June 17, 2026, order certified the June 10, 2025, order as final pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure.

On August 14, 2026, Northeast filed a motion to dismiss this appeal on the basis that the June 10, 2025, order is not a final order or judgment, and thus, this Court lacks jurisdiction to hear the appeal. On August 24, 2026, Pachira filed its response in opposition to the motion to dismiss.[1] After considering the motion to dismiss and the response thereto, the record on appeal, and the applicable law, we find that the order on appeal is not a final, appealable order, and a memorandum decision dismissing this appeal is appropriate.

This matter has a somewhat tortured procedural history. Because we conclude that this appeal was improvidently docketed, our recitation of the underlying facts and procedural history of the case will be brief. As previously described by the Supreme Court of Appeals of West Virginia ("SCAWV"):

> In 2011, plaintiff [Pachira] entered into an agreement with defendant [Northeast]. The agreement established the Blacksville Area of Mutual

[1] Pachira is represented by Benjamin L. Bailey, Esq., and Christopher D. Smith, Esq. Northeast is represented by Lori A. Dawkins, Esq., Bridget D. Furbee, Esq., Garrett M. Spiker, Esq., Brian Gallagher, Esq., Shaina L. Richardson, Esq., John Kevin West, Esq., and James A. Walls, Esq.

> Interest ("Blacksville AMI") and set forth guidelines for exploiting oil and gas leases and other mineral interests in an area encompassing parts of Monongalia County, West Virginia, and Greene County, Pennsylvania. Pachira and Northeast agreed that all jointly-held leases within the Blacksville AMI would be developed with Northeast owning a 75% working interest and Pachira owning a 25% working interest. The parties subsequently entered into a Joint Operating Agreement to operate natural gas wells on the leased lands, and again agreed to split costs and profits using the same 75%/25% ratio.
>
> At some later point, Pachira and Northeast entered into an oral agreement to develop and operate a water system. This system was originally designed to efficiently transport water from Dunkard Creek, a stream within the Blacksville AMI, for use in the drilling and hydraulic fracturing ("fracking") of wells within the Blacksville AMI. The parties agree that there is no written agreement governing the construction, operation, or maintenance of the water lines and facilities. Despite no such formal agreement, Pachira and Northeast jointly shared the costs of the water system using the same 75%/25% ratio previously used in the Blacksville AMI agreement and the Joint Operating Agreement.

Ne. Nat. Energy LLC v. Pachira Energy LLC, 243 W. Va. 362, 364-65, 844 S.E.2d 133, 135-36 (2020).[2]

In Pachira's third amended complaint, which is Pachira's operative pleading, Pachira asserts claims for declaratory judgment, breach of contract, and breach of fiduciary duty regarding the water system, generally alleging that the water system is a joint venture/partnership property, which imposes certain duties on the parties, which have been violated by Northeast. The third amended complaint also asserts causes of action for breach of contract, conversion, and fraud related to certain sums paid for seismic data; breach of contract related to the parties' joint operating agreement; and causes of action for preliminary and permanent injunctive relief.[3]

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[2] *See also State ex rel. Pachira Energy, LLC v. Scott*, No. 23-142, 2024 WL 1638584 (W. Va. Apr. 16, 2024) (memorandum decision).

[3] Specifically, the third amended complaint alleges the following causes of action: Count I Breach of Contract; Count II Breach of Contract; Count III Breach of Contract; Count IV Declaratory Judgment; Count V Declaratory Judgment; Count VI Preliminary and Permanent Injunction; Count VII Preliminary and Permanent Injunction; Count VIII Preliminary and Permanent Injunction; Count IX Fraud; Count X Conversion; and Count XII [sic] Breach of Fiduciary Duty.

Northeast answered the third amended complaint and asserted counterclaims for declaratory judgment that argued the water system is governed by an implied contract between the parties that is separate and distinct from the contractual relationship between the parties established by other agreements. Northeast also asserted counterclaims in the alternative for breach of fiduciary duties and breach of implied partnership agreement if the court found that the parties entered into an implied partnership. In addition, Northeast asserted counterclaims for breach of contract for Pachira's alleged breach of the parties' joint operating agreement, declaratory judgment related to the joint operating agreement, breach of contract related to the water system, and declaratory judgment related to the seismic data issue.[4]

On May 31, 2024, Northeast filed their motion for summary declaratory judgment seeking a declaration that the parties did not form a partnership and instead entered into an implied contract in relation to the water system.[5] On February 7, 2025, the circuit court held a hearing on the motion. Following the hearing, the circuit court issued the June 10, 2025, order granting declaratory judgment on Count II and Count III of Northeast's counterclaims, holding that the parties did not form a partnership and instead, the creation and operation of the water system was governed by an implied contract.

On October 31, 2025, Northeast moved for judgment on the pleadings on all of Pachira's "partnership-based" claims, including Counts II, V, VI, VII, and XI of the third amended complaint.[6] Northeast argued that since the circuit court determined in its June 10, 2025, order that no partnership existed between the parties, any of Pachira's claims that were premised on the existence of a partnership cannot survive.

On December 16, 2025, in response to Northeast's October 31, 2025, motion for judgment on the pleadings, Pachira filed a motion asking the circuit court to revise its June 10, 2025, order or certify the order as immediately appealable pursuant to Rule 54(b) of

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[4] Specifically, Northeast asserted the following counterclaims: Count I Declaratory Judgment; Count II Declaratory Judgment; Count III Declaratory Judgment; Count IV Breach of Contract; Count V Declaratory Judgment; Count VI Breach of Contract; Count VII Declaratory Judgment; Count VIII Declaratory Judgment; Count IX In The Alternative, Breach of Implied Partnership Agreement; and Count X In The Alternative, Breach of Fiduciary Duties.

[5] Specifically, Northeast moved for summary declaratory judgment on Counts II and III of its counterclaims.

[6] To be clear, the eleventh count of the third amended complaint is mislabeled as Count XII. Northeast's October 31, 2025, motion for judgment makes clear that its reference to Count XI is actually in regard to the claim that is labeled as Count XII in the third amended complaint.

the West Virginia Rules of Civil Procedure. On June 17, 2026, the circuit court entered an order certifying the June 10, 2025, order as final pursuant to Rule 54(b). Notably, in the June 17, 2026, order, the circuit court held:

> 4. Whether the parties formed a partnership regarding the Water Line and Handling Facilities is a central issue in this case. Several of Pachira's claims are premised on or informed by whether or not a partnership exists. *See, e.g.*, Third Am. Compl. Count XII (asserting a breach of fiduciary duty claim premised on NNE's breach of fiduciary duty to the Water Line and Handling Facilities partnership).
> . . .
> 16. Second, there is no just reason for delay. The effects of the partnership determination in this case are far-reaching, affecting every aspect of the case including the duties [Northeast] owes to Pachira, the damages and remedies available, and the extent of discovery. Indeed, Defendants moved for judgment on the pleadings on several claims based solely on the purported effects of the Order and have sought to cabin or limit discovery in the case based on that same order.
> . . .
> 17. Given the far-ranging effects on this case of the Order's determination regarding partnership, and the effects this ruling will have on the parties' ongoing business relationship, there is no just reason to delay resolution of this issue on appeal[.]

On July 16, 2026, Pachira filed its notice of appeal of both the June 10, 2025, order and the June 17, 2026, order with this Court. In its motion to dismiss filed with this Court, Northeast argues that although the circuit court certified its order pursuant to Rule 54(b), Pachira's request for certification was improvidently granted because the resolved counterclaims and the remaining claims arise from the same nucleus of operative facts, involve overlapping evidence and legal issues, and remain closely intertwined.

An appellate court's review of a circuit court's Rule 54(b) certification is guided by the following test:

> In reviewing a circuit court's certification under Rule 54(b) of the West Virginia Rules of Civil Procedure, this Court applies a two-prong test. First, we scrutinize *de novo* the circuit court's evaluation of the interrelationship of the claims, in order to decide whether the circuit court completely disposed of one or more claims, which is a prerequisite for an appeal under this rule. As to the second prong of the inquiry under the rule—whether there is any just reason for delay—this Court accords the circuit court's determination considerably more deference than its first-prong determination. The circuit court's assessment that there is "no just reason for delay" will not be

> disturbed unless the circuit court's conclusion was clearly unreasonable, because the task of balancing the contending factors is peculiarly one for the trial judge, who can explore all the facets of a case.

Syl. Pt. 1, *Province v. Province*, 196 W. Va. 473, 473 S.E.2d 894 (1996).

In *Province*, the SCAWV explained that claims are "separately enforceable and subject to Rule 54(b) certification" if "there is more than one possible recovery or if different sorts of relief are sought." *Province*, 196 W. Va. at 479, 473 S.E.2d at 900 (citation modified). Here, under the first prong of the *Province* test, though the June 10, 2025, order ostensibly resolves two of Northeast's counterclaims regarding the existence of an implied contract versus a partnership, several other counts asserted by both parties remain pending that concern the same issue.[7] Further, the relief granted by the circuit court is a declaration that "the relationship between [Pachira, and Northeast] is not an implied partnership but an implied contractual agreement." While labeled as declaratory relief, the existence of an implied contract rather than a partnership is merely a predicate factual issue relevant to various remaining claims in the case. Therefore, the claims purportedly resolved did not seek a different recovery or relief; they sought resolution of component parts of pending claims, framed as declaratory relief. Accordingly, the June 10, 2025, order fails the first prong of the *Province* test because it does not completely dispose of the properly separable claims regarding the relationship of the parties.

Turning to the second prong of *Province*, in the recent opinion of *Hopkins v. Sutphin*, 253 W. Va. 372, 931 S.E.2d 772 (2026) the SCAWV reversed this Court for reviewing a circuit court's partial dismissal order where

> the issues are so common and overlapping that the very argument on appeal to this Court is that the still-pending claims sufficiently encompass those before us and are pleaded in the alternative to those other causes of action. Deploying Rule 54(b) to review such common and overlapping issues inseparable from their pending counterparts is likely to result—and, indeed, has already resulted—in multiple appeals. While perhaps immediately and superficially expedient, permitting interlocutory appeal from these interrelated claims—and inadvertently inviting the appeal of others—carries a hefty price tag, both for the litigants themselves in pursuing and defending multiple appeals and for the appellate courts[.]

[7] Such claims include Northeast's counterclaims Count IX and X, which are pleaded in the alternative in the event the circuit court found that an implied partnership existed that governed the water system. Likewise, several of Pachira's claims are premised on whether an implied partnership or contract exists. This was not lost on Northeast, who, as mentioned previously, moved for judgment on Pachira's pending "partnership-based" claims on October 31, 2025.

Id. at ___, 931 S.E.2d at 783. Here, the basis for the circuit court's holding that there is no just reason for delay flies in the face of the SCAWV's reasoning in *Hopkins*.[8] The claims resolved in the June 10, 2025, order and several of the claims remaining below are pleaded in the alternative and arise from the same operative facts and legal issue concerning the nature of the parties' relationship. The possibility of duplicative appellate review is not merely speculative as the partnership determination is expressly implicated in multiple remaining claims. The parties' arguments concerning those claims continue to depend upon the legal effect of the partnership determination. Immediate review of this single legal issue at this stage in the proceedings would promote piecemeal litigation and create substantial risk of duplicative review. Accordingly, the second prong of the *Province* test is not met.

Because neither prong of the *Province* test is satisfied, we lack jurisdiction and the appeal must be dismissed. *See* Syl. Pt. 6, *Aaron W. v. Evelyn W.*, 251 W. Va. 1, 909 S.E.2d 36 (2024) ("The Intermediate Court of Appeals of West Virginia generally does not have appellate jurisdiction over interlocutory appeals. W. Va. Code § 51-11-4(d)(8)."); *see also James M.B. v. Carolyn M.*, 193 W. Va. 289, 292 n.3, 456 S.E.2d 16, 19 n.3 (1995) (recognizing orders properly certified under Rule 54(b) as an exception to rule of finality). Accordingly, based on the foregoing, we conclude that this matter was improvidently docketed and, therefore, the appeal is dismissed.

Dismissed.

ISSUED: November 10, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White

[8] While a circuit court's analysis on this prong is ordinarily entitled to considerable deference, in the June 17, 2026, order the circuit court did not analyze the matter decided in the June 10, 2025, order as two resolved claims; instead, the court recognized that it had decided an "issue," the appellate resolution of which will "substantially shape[] how this case will be developed and ultimately tried." This is almost directly counter to the SCAWV's guidance in *Hopkins* that "[t]he practical implications likewise weigh heavily against immediate review of issues that overlap or otherwise influence analysis of those still pending below." *Hopkins*, 253 W. Va. at ___, 931 S.E.2d at 783.