

IN THE COURT OF APPEALS OF THE STATE OF OREGON

KLAMATH IRRIGATION DISTRICT,  
Petitioner-Respondent,

v.

OREGON WATER RESOURCES DEPARTMENT, an agency of the State of Oregon;  
THOMAS BYLER, in his official capacity as Director of the Oregon Water Resources  
Department; and DANETTE WATSON, in her official capacity as Watermaster  
for the Oregon Water Resources Department,  
Respondents-Appellants.

Marion County Circuit Court No. 20CV17922

Court of Appeals No. A174754

**ORDER DETERMINING JURISDICTION; DISMISSING APPEAL;  
DENYING MOTION TO STAY AS MOOT**

Appellants have filed a notice of appeal from the trial court's "Order Granting Petitioner's Partial Motion for Summary Judgment as to Count 2." They move for an order determining whether this court has jurisdiction to entertain the appeal. As discussed below, the court determines that the order is not appealable and, therefore, the court lacks jurisdiction and dismisses the appeal.

In this case, respondent Klamath Irrigation District filed a complaint against appellants in which respondent sought an injunction that would compel appellants to refrain from diverting water stored in Upper Klamath Lake Reservoir (UKL) without first securing a water right or lease authorizing such a diversion. In the complaint's first claim, respondent alleged that all appellants had violated the Administrative Procedures Act by failing to take control of UKL's water distribution and distribute it in accordance with the order of determination as to the water rights associated with UKL from Klamath County Circuit Court Case Number 20CV15606 ("Count 1"). Respondent sought an "order and judgment compelling [appellants] to immediately take exclusive charge of the UKL and distribute water in accordance with" the order of determination. In the complaint's second claim, respondent sought an injunction against appellant Watson, Watermaster for the Oregon Water Resources Department, pursuant to ORS 540.740 ("Count 2"). Respondent moved for partial summary judgment on Count 2; appellants opposed the motion and filed cross-motions for summary judgment and dismissal of respondent's claim. After months of litigation, the trial court issued the "Order Granting Petitioner's Partial Motion for Summary Judgment as to Count 2." The footer of the order reads, "Limited Judgment on Second Claim for Relief."

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The order states that, pursuant to ORS 540.740, "Watson is ordered to immediately stop distribution, use and/or release of Stored Water from UKL without determining that the distribution, use and/or release is for a permitted purpose by users with existing water rights of record or determined claims to use the Stored Water in the UKL."

ORS 540.740 provides:

"Any person who may be injured by the action of any watermaster may appeal to the circuit court for an injunction. The injunction shall only be issued in case it can be shown at the hearing that the watermaster has failed to carry into effect the order of the Water Resources Commission or decrees of the court determining the existing rights to the use of water."

Appellants first argue that the court has jurisdiction under ORS 19.205 because the appeal is from a limited judgment. According to appellants, the order is a limited judgment because (1) the footer on the document describes the document as a "Limited Judgment on Second Claim for Relief," and (2) the court entirely disposed of the second claim for relief and entered a permanent injunction against the watermaster in the order. The court rejects those arguments.

ORCP 67 B provides that, when more than one claim is presented in an action, the court may render a limited judgment as to one or more, but fewer than all, claims only "if the judge determines that there is no just reason for delay." See *also* ORS 18.005(13); ORS 18.052(1) ("If the judgment is a limited judgment rendered under the provisions of ORCP 67 B, the judge must determine that there is no just reason for delay, but the judgment document need not reflect that determination if the title of the judgment document indicates that the judgment is a limited judgment."); *Interstate Roofing, Inc. v. Springville Corp.*, 347 Or 144, 218 P3d 113 (2009). The circuit court, in its letter opinion in this case, specifically explained that "determination of summary judgment on Count 2 is not appropriate for entry of a limited judgment, because the parties are identical and the same factual and legal issues are present and remain at issue in Count 1." In other words, the court expressly declined to enter a limited judgment.

Furthermore, under ORS 18.038(1), a "judgment document must be plainly titled as a judgment" and, under ORS 18.058(1), the court administrator shall note in the register that a judgment document has been filed. Here, despite the document's footer, the order is *not* titled or entered in the register as a judgment. Instead, it is titled and entered as an order. The requirements that the judgment document be plainly titled as a judgment and that the judgment be entered in the register as a judgment are "jurisdictional for the purposes of appeal of a judgment." ORS 18.245. The order at issue here meets neither of those requirements. For all of those reasons, the court rejects appellants' contention that the order is appealable as a limited judgment under ORS 19.205(1).

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In the alternative, appellants contend that the order is appealable under ORS 19.205(5), which provides:

"An appeal may be taken from the circuit court in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment or order entered in an action, unless appeal is expressly prohibited by the law authorizing the special statutory proceeding."

Typically, in order to be appealable as a "special statutory proceeding" under ORS 19.205, the proceeding must be separate and distinct from all other judicial proceedings. *State v. Mannix*, 263 Or App 162, 170, 326 P3d 1236 (2014); see *State v. Threet*, 294 Or 1, 5, 653 P2d 960 (1982) ("[S]eparateness is a necessary attribute of a 'special statutory proceeding.'"). Further, a proceeding is *not* a special statutory proceeding when there is a "strong dependent relationship between the subject matter of the two proceedings." *State v. Branstetter*, 332 Or 389, 398, 29 P3d 1121 (2001); see *State v. Johnson*, 254 Or App 447, 295 P3d 677 (2013). Further, the court has observed, to be appealable under ORS 19.205(5) an order or judgment entered in a special statutory proceeding "must be the sort that would be appealable under ORS 19.205(1) to (3) if entered in an action." *A. M. v. N. E. D.*, 287 Or App 26, 40, 400 P3d 1036 (2017).

Appellants assert that this is a special statutory proceeding because there were multiple claims pleaded and "each stands on its own, as evidenced by the injunction itself." Respondent, for its part, urges that Counts 1 and 2 are dependent on each other and share the same factual and legal issues. Respondent points out that the trial court considered the claims *not* to be separate and distinct, which was a reason that it concluded that a limited judgment should not be entered. Having reviewed the trial court file, the court agrees with respondent that the order in this case is not appealable under ORS 19.205(5). The proceedings giving rise to the injunctive relief are not separate and distinct from all other judicial proceedings. Instead, the case consists of multiple factually and legally intertwined claims that have a "strong dependent relationship" with one another. Given the strong relationship between the claims in the case, evidenced by the trial court's express determination that a limited judgment was not appropriate *because* the claims are not separate and distinct, the court concludes that this is not a "separate statutory proceeding."<sup>1</sup>

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<sup>1</sup> Although, before the trial court, there was some discussion regarding whether the order could be worded such that an "interlocutory" appeal would be permitted, to be appealable, the order would need to fall under a statute providing for such an appeal, and it does not.

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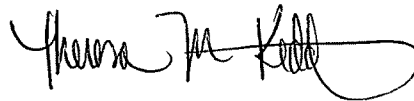
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Because, contrary to appellants' contentions, the order in this case is not a limited judgment or an appealable order in a special statutory proceeding, it is not an appealable order.

In the absence of an appealable order, the court lacks jurisdiction and, on its own motion, dismisses the appeal.

Appeal dismissed.

The motion to stay filed by appellants on January 14, 2020, is denied as moot.



THERESA M. KIDD  
APPELLATE COMMISSIONER  
1/15/2021 11:21 AM

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

Costs: Allowed, payable by: Appellants

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c: Nathan R Rietmann  
Denise G Fjordbeck  
Inge D Wells

ej

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