IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee	)	
	)	
v.	)	No. 19-4066
	)	
NELDON P. JOHNSON,	)	
	)	
Defendant-Appellant	)	
	)	
and	)	
	)	
RAPOWER-3, LLC, ET AL.	)	
	)	
Defendants	)	

GOVERNMENT'S RESPONSE REGARDING JURISDICTION

This Court lacks appellate jurisdiction for the reasons stated in the Court's order of May 1, 2019. The two orders that Neldon P. Johnson has appealed *pro se* arise from post-judgment litigation regarding the collection and distribution of assets by the court-appointed receiver in this case. One is an order denying Johnson's *pro se* motion to dismiss both the receiver and the entire case. (Doc. 624.) And the other is a minute order that, among other things, ordered Johnson and his wife to appear for depositions by the receiver and took under advisement the Government's motion for an order to show cause

why Johnson and others should not be held in civil contempt for violating the receivership order. (Doc. 619.) These orders are not "final decisions" within the meaning of 28 U.S.C. § 1291, and no exceptions to the final decision rule apply. (*See* Order 1–3 (May 1, 2019).) The Court should therefore dismiss this appeal for lack of jurisdiction, as contemplated in the May 1 order. (*Id.* at 3.)

Johnson contends in response to this Court's order that the district court's order denying his motion to dismiss both the court-appointed receiver and the entire case (Doc. 624) "is a final decision on that matter . . . . and is a final order because it will terminate all further proceedings." (Resp. 1.) But while Johnson's motion *sought* an order terminating all further proceedings, the district court denied that relief and allowed the proceedings to continue. (Doc. 624.) As noted in this Court's May 1 order, "[a] final decision 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.' " (Order 2 (May 1, 2019) (quoting *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 204 (1999)).) Thus, "[t]he denial of a motion to dismiss in general is not immediately appealable." (*Id.* at 3 (citing *Dababneh v. FDIC*, 971 F.2d 428, 432 n.6 (10th Cir. 1992)). Johnson's

belief that the district court erred by "allowing a continuation of a case when it ought to be terminated" (Resp. 2) does not transform the interlocutory denial of his dismissal motion into an immediately appealable final decision.

The remainder of Johnson's response consists of complaints that the district court has treated him unfairly and wrongly decided the merits in the underlying judgment and order appointing a receiver. (Resp. 2–5.) But none of that has anything to do with this Court's lack of jurisdiction to review the orders appealed from.

Because those orders are not final decisions and no exception to the rule of finality is applicable, the Court should dismiss this appeal for lack of appellate jurisdiction.

Respectfully submitted,

s/ Clint A. Carpenter

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Dated: May 31, 2019

CERTIFICATE OF SERVICE AND DIGITAL SUMBISSION

I hereby certify that on May 31, 2019 I electronically filed the foregoing using the court's CM/ECF system and served a copy by U.S. First Class Mail to:

Neldon P. Johnson
2730 West 4000 South
Oasis, UT 84624-9703

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, System Center Endpoint Protection 2016 (updated daily), and according to the program are free of viruses.

Date: May 31, 2019

s/ Clint A. Carpenter

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