Rule 54. Judgments; Costs.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 6. Judgment

As amended through Rule Change 2017(7), effective August 24, 2017

Rule 54. Judgments; Costs

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and order to or from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) **Demand for Judgment.** A judgment by default shall not be different in kind from that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) **Costs.** Except when express provision therefor is made either in a statute of this state or in these rules, reasonable costs shall be allowed as of course to the prevailing party considering any relevant factors which may include the needs and complexity of the case and the amount in controversy. But costs against the state of Colorado, its officers or agencies, shall be imposed only to the extent permitted by law.

(e) **Against Partnership.** Any judgment obtained against a partnership or unincorporated association shall bind only the joint property of the partners or associates, and the separate property of the parties personally served.

(f) **After Death, How Payable.** If a party dies after a verdict or decision upon any issue of

fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be paid as a claim against his estate.

(g) **Against Unknown Defendants.** The judgment in an action in rem shall apply to and conclude the unknown defendants whose interests are described in the complaint.

(h) **Revival of Judgments.** A judgment may be revived against any one or more judgment debtors whether they are jointly or severally liable under the judgment. To revive a judgment a motion shall be filed alleging the date of the judgment and the amount thereof which remains unsatisfied. Thereupon the clerk shall issue a notice requiring the judgment debtor to show cause within 14 days after service thereof why the judgment should not be revived. The notice shall be served on the judgment debtor in conformity with Rule 4. If the judgment debtor answer, any issue so presented shall be tried and determined by the court. A revived judgment must be entered within twenty years after the entry of the judgment which it revives, and may be enforced and made a lien in the same manner and for like period as an original judgment. If a judgment is revived before the expiration of any lien created by the original judgment, the filing of the transcript of the entry of revivor in the register of actions with the clerk and recorder of the appropriate county before the expiration of such lien shall continue that lien for the same period from the entry of the revived judgment as is provided for original judgments. Revived judgments may themselves be revived in the manner herein provided.

Cite as Colo. R. Civ. P. 54

History. Source: (d) and (h) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b). Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

Note:

Comments

1989

[1] The amendment to C.R.C.P. 54(c) is to eliminate what has been perceived as a possible conflict between that section and the recent change to C.R.C.P. 8(a) which prohibits statement of amount in that ad damnum. The amendment simply strikes the words "or exceed in amount" to make the section consistent with C.R.C.P. 8(a). Relief sought in the prayer is now described rather than stated as an amount. It is, therefore, not necessary to have an amount limitation in C.R.C.P. 54(c).

2015

[2] Rule 54(d) is amended to require that cost awards be "reasonable" by directing courts to consider any relevant

factors, which may include the needs and complexity of the case, and the amount in controversy.

[3] The reasonableness requirement is consistent with § 13-16-122 , C.R.S., which lists matters included in cost awards, because it can hardly have been the intent of the legislature to authorize unreasonable awards.

[4] Cost shifting must be addressed in the Case Management Order required by C.R.C.P. 16.

Case Notes:

Annotation

I. General Consideration.

Law reviews. For article, "Notes on Proposed Amendments to Colorado Rules of Civil Procedure", see 27 Dicta 165 (1950). For article, "Amendments to the Colorado Rules of Civil Procedure", see 28 Dicta 242 (1951). For article, "Judgment: Rules 54-63 ", see 23 Rocky Mt. L. Rev. 581 (1951). For article, "One Year Review of Civil Procedure and Appeals", see 36 Dicta 5 (1959). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962). For article, "Certification Under Rule 54(b) : Risky Efficiency", see 13 Colo. Law. 997 (1984). For article, "The Final Judgment Rule And Attorney Fees", see 17 Colo. Law. 2139 (1988).

Where the damages to which plaintiff is entitled can only be estimated at the pleading stage and the defendant is given notice of the various elements of the damages claim, then recovery is not to be limited to the amount listed in the complaint. *DeCicco v. Trinidad Area Health Ass'n*, 40 Colo. App. 63, 573 P.2d 559 (1977).

Rule inapplicable to C.R.C.P. 120 foreclosure sale. Because a statutory public trustee foreclosure does not involve foreclosure through the court, and because there is no appeal from the limited order of a C.R.C.P. 120, court on a motion authorizing the public trustee to conduct a foreclosure sale, this rule is inapplicable to such a foreclosure. *Bakers Park Mining & Milling Co. v. District Court*, 662 P.2d 483 (Colo. 1983).

Rule as basis for jurisdiction. *See Bd. of County Comm'rs v. Anderson*, 34 Colo. App. 37, 525 P.2d 478 (1974), aff'd, 534 P.2d 1201 (1975); *Silverman v. Univ. of Colo.*, 36 Colo. App. 269, 541 P.2d 93 (1975); *United Bank of Denver Nat'l Ass'n v. Shavlik*, 189 Colo. 280, 541 P.2d 317 (1975); *First Com. Corp. v. Geter*, 37 Colo. App. 391, 547 P.2d 1291 (1976); *City of Delta v. Thompson*, 37 Colo. App. 205, 548 P.2d 1292 (1975); *Chavez v. Zanghi*, 42 Colo. App. 417, 598 P.2d 152 (1979); *Styers v. Mara*, 631 P.2d 1138 (Colo. App. 1981); *Fort Collins Nat'l Bank v. Fort Collins Nat'l Bank Bldg.*, 662 P.2d 196 (Colo. App. 1983).

Applied in *Vogt v. Hansen*, 123 Colo. 105, 225 P.2d 1040 (1950); *Corper v. City & County of Denver*, 36 Colo. App. 118, 536 P.2d 874 (1975), modified, 191 Colo. 252, 552 P.2d 13 (1976); *Shaw v. Aurora Mobile Homes & Real Estate, Inc.*, 36 Colo. App. 321, 539 P.2d 1366 (1975); *Ginsberg v. Stanley Aviation Corp.*, 37 Colo. App. 240, 551 P.2d 1086 (1975); *Page v. Clark*, 40 Colo. App. 24, 572 P.2d 1214 (1977); *Hait v. Miller*, 38 Colo. App. 503, 559 P.2d 260 (1977); In re Heinzman, 40 Colo. App. 227, 579 P.2d 638 (1977); *Mancillas v. Campbell*, 42 Colo. App. 145, 595 P.2d 267 (1979); In re Heinzman, 198 Colo. 36, 596 P.2d 61 (1979); *Tipton v. Zions First Nat'l Bank*, 42 Colo. App.

534, 601 P.2d 352 (1979); *Gray v. Reg'l Transp. Dist.*, 43 Colo. App. 107, 602 P.2d 879 (1979); *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979); *Haines v. United Sec. Ins. Co.*, 43 Colo. App. 276, 602 P.2d 901 (1979); *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979); *Naiman v. Warren A. Flickinger & Assocs.*, 43 Colo. App. 279, 605 P.2d 63 (1979); *Ellerman v. Kite*, 626 P.2d 696 (Colo. App. 1979); *First Nat'l Bank v. Collins*, 44 Colo. App. 228, 616 P.2d 154 (1980); *Fuqua Homes, Inc. v. Western Sur. Co.*, 44 Colo. App. 257, 616 P.2d 163 (1980); *Cibere v. Indus. Comm'n*, 624 P.2d 920 (Colo. App. 1980); *Rossmiller v. Romero*, 625 P.2d 1029 (Colo. 1981); *Campbell v. Home Ins. Co.*, 628 P.2d 96 (Colo. 1981); *Broyles v. Fort Lyon Canal Co.*, 638 P.2d 244 (Colo. 1981); *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922 (Colo. 1982); *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982); *United States v. City & County of Denver*, 656 P.2d 1 (Colo. 1982); People in Interest of W.M., 64 3 P.2d 794 (Colo. Ct. App. 1982); *F.J. Kent Corp. v. Town of Dillon*, 648 P.2d 669 (Colo. App. 1982); *Aspen-Western Corp. v. Bd. of County Comm'rs*, 650 P.2d 1326 (Colo. App. 1982); *Am. Television & Commc'ns Corp. v. Manning*, 651 P.2d 440 (Colo. App. 1982); *Frank v. First Nat'l Bank*, 653 P.2d 748 (Colo. App. 1982); Heinrichsdorff v. Raat, 655 P.2d 860 (Colo. App. 1982); *Ortega v. Bd. of County Comm'rs*, 657 P.2d 989 (Colo. App. 1982); *City of Colo. Springs v. Berl*, 658 P.2d 280 (Colo. App. 1982); *Krause v. Columbia Sav. & Loan Ass'n*, 661 P.2d 265 (Colo. 1983); *Bd. of County Comm'rs v. Pennobscot, Inc.*, 662 P.2d 1091 (Colo. 1983); *Wickham v. Wickham*, 670 P.2d 452 (Colo. App. 1983); *Slovek v. Bd. of County Comm'rs*, 697 P.2d 781 (Colo. App. 1984); *People v. Mountain States Tel. & Tel. Co.*, 739 P.2d 850 (Colo. 1987); People in Interest of B.J.F., 761 P.2d 297 (Colo. App. 1988).

II. Definition; Form.

Validity of a judgment depends on the court's jurisdiction of the person and the subject matter of the issue it decides. *McLeod v. Provident Mut. Life Ins. Co.*, 186 Colo. 234, 526 P.2d 1318 (1974).

It is not approved practice for a trial court to make no independent conclusions of law, but rather make its conclusions by incorporating party's brief. *Metro. Denver Sewage Disposal Dist. No. 1 v. Farmers Reservoir & Irrigation Co.*, 179 Colo. 36, 499 P.2d 1190 (1972).

Judgment rendered without jurisdiction is void and may be attacked directly or collaterally. *McLeod v. Provident Mut. Life Ins. Co.*, 186 Colo. 234, 526 P.2d 1318 (1974).

III. Multiple Claims or Parties.

Law reviews. For note, "Res Judicata-Should It Apply to a Judgment Which is Being Appealed?", see 33 Rocky Mt. L. Rev. 95 (1960). For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 133 (1961).

Section (b) is identical to corresponding federal rule. Since section (b) of this rule is identical to the corresponding federal rule, the federal cases interpreting F.R.C.P. 54(b) are persuasive here. *Moore & Co. v. Triangle Constr. & Dev. Co.*, 44 Colo. App. 499, 619 P.2d 80 (1980); *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Forbes v. Goldenhersh*, 899 P.2d 246 (Colo. App. 1994); *State ex rel. Salazar v. Gen. Steel Domestic Sales*, LLC, 129 P.3d 1047 (Colo. App. 2005).

The proper function of a reviewing court in section (b) cases is for the court to fully review whether the trial court completely resolved a single claim for relief; however, some deference should be given where the trial court has made its reasoning clear. *State ex rel. Salazar v. Gen. Steel Domestic Sales, LLC*, 129 P.3d 1047 (Colo. App. 2005).

Section (b) creates an exception to the requirement that an entire case must be resolved by a final judgment before an appeal is brought. *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Nelson v. Elway*, 971 P.2d 245 (Colo. App. 1998).

For the purposes of issue preclusion, a judgment that is still pending on appeal is not final. *Rantz v. Kaufman*, 109 P.3d 132 (Colo. 2005).

A judgment is not final for purposes of issue preclusion until certiorari has been resolved both in the Colorado supreme court and the United States supreme court. Certiorari can be resolved in any of three ways: (1) The parties fail to file a timely petition for certiorari; (2) the court denies the petition for certiorari; or (3) the court issues an opinion after granting certiorari. *Barnett v. Elite Props. of Am.*, 252 P.3d 14 (Colo. App. 2010).

Jurisdiction to hear appeal depends on correctness of certification. An appellate court's jurisdiction to entertain an appeal of a trial court's section (b) certification depends upon the correctness of the certification itself. *Alexander v. City of Colo. Springs*, 655 P.2d 851 (Colo. App. 1982); *Richmond Am. Homes of Colo., Inc. v. Steel Floors, LLC*, 187 P.3d 1199 (Colo. App. 2008).

A premature notice of appeal does not render void for lack of jurisdiction acts of the trial court taken during the interval between the filing of the invalid notice of appeal and the dismissal of the appeal by the court of appeals. *Woznicki v. Musick*, 94 P.3d 1243 (Colo. App. 2004), aff'd, 136 P.3d 244 (Colo. 2006).

Where the trial court incorrectly entered a default judgment the certification of that judgment pursuant to section (b) was likewise improper. Although the court had jurisdiction to decide the legal sufficiency of the section (b) certification, the court lacked jurisdiction to consider the issues raised by the appellant regarding the adequacy of service on him and the denial of his motion to set aside the default judgment. *Salomon Smith Barney, Inc. v. Schroeder*, 43 P.3d 715 (Colo. App. 2001).

Previously, a judgment disposing of less than the entire case could be final and subject to review only where it was a final determination of a distinct claim arising out of a different transaction or occurrence from the other claims involved. *Brown v. Mountain States Tel. & Tel. Co.*, 121 Colo. 502, 218 P.2d 1063 (1950).

Rule grants trial courts the authority to certify a ruling as a final judgment on less than an entire case, without altering the requirements of finality of judgment as to any other claim. *Steven A. Gall, P.C. v. District Court*, 965 P.2d 1268 (Colo. 1998).

An order dismissing an action as to two of the defendants and directing that plaintiffs should have a stated time within which to "Prepare the record in order to apply to the supreme court for appeal" is a final judgment to review. *Ruhter v. Steele*, 120 Colo. 367, 209 P.2d 771 (1949).

Where several items alleged in a complaint all resulted from a single transaction or occurrence, these items of damage still constituted a single claim, and the determination of one of the several asserted legal rights was not a final judgment. *Brown v. Mountain States Tel. & Tel. Co.*, 121 Colo. 502, 218 P.2d 1063 (1950).

In cases which have been consolidated for the purpose of trial, a judgment entered in one case only is not a final appealable judgment absent a specific certification that there is no just reason for delay by the court pursuant to section (b). *Mission Viejo Co. v. Willows Water Dist.*, 818 P.2d 254 (Colo. 1991).

Section (b) of this rule prevents or imposes conditions on the entry of final judgment on less than all of the pending claims. *Harvey v. Morris*, 148 Colo. 489, 367 P.2d 352 (1961).

Trial court may direct entry of final judgment where more than one claim exists. Section (b) of this rule allows a trial court to direct entry of a final judgment upon one or more but less than all of the claims on certain conditions where more than one claim exists. *Hamm v. Twin Lakes Reservoir & Canal Co.*, 150 Colo. 447, 373 P.2d 525 (1962).

Final adjudication of a particular claim in a case involving multiple claims or multiple parties may be certified as a final judgment. *Levine v. Empire Sav. & Loan Ass'n*, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

This rule directs what must be done where multiple claims are involved and less than all of them decided. *Fidelity & Deposit Co. v. May*, 142 Colo. 195, 350 P.2d 343 (1960).

This rule specifically provides that where multiple claims are involved and less than all of them are decided, in order to effect a final judgment or final disposition of the matters decided, the trial court must expressly determine that there is no just reason for delay and must expressly direct the entry of a judgment with respect to those claims which are decided. *Blackburn v. Skinner*, 156 Colo. 41, 396 P.2d 968 (1964).

In order for a trial court to enter a final judgment on less than all of the claims pending before it pursuant to this rule, the order certified as final must dispose of an "entire claim". Thus, if only a single claim is asserted, but multiple remedies are sought based upon that single claim, an order denying one remedy, but not disposing of the requests for other remedies, cannot be made a final judgment by the entry of a certification pursuant to this rule. *Virdanco, Inc. v. MTS Intern.*, 791 P.2d 1236 (Colo. App. 1990).

In order for a judgment to be "final" with respect to a whole, single claim, that order must fix all damages stemming from that claim. Thus, if the court's order purports to award some damages, but reserves the right to award additional damages at a later date, that order does not dispose of an entire claim and cannot be made a final judgment under this rule. *Virdanco, Inc. v. MTS Intern.*, 791 P.2d 1236 (Colo. App. 1990).

Where the express language required by this rule does not appear in the order of judgment, an appeal must be dismissed. *Blackburn v. Skinner*, 156 Colo. 41, 396 P.2d 968 (1964).

If an order does not constitute final adjudication of a claim, certification of it as such does not operate to make it so.

Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

Order awarding attorney fees as sanctions under C.R.C.P. 11 and § 13-17-102 held not to be a claim for relief; thus appeal of order was dismissed. *State Farm Fire & Cas. Co. v. Bellino*, 976 P.2d 342 (Colo. App. 1998); *State ex rel. Suthers v. CB Servs. Corp.*, 252 P.3d 7 (Colo. App. 2010).

Colorado rules and decisions discourage the piecemeal review of a cause. *Vandy's Inc. v. Nelson*, 130 Colo. 51, 273 P.2d 633 (1954); *Berry v. Westknit Originals, Inc.*, 145 Colo. 48, 357 P.2d 652 (1960); *Hamm v. Twin Lakes Reservoir & Canal Co.*, 150 Colo. 447, 373 P.2d 525 (1962).

Purpose of requiring that an entire claim for relief be finally adjudicated before certification is proper is to avoid the dissipation of judicial resources through piecemeal appeals. *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982).

Number of precautionary appeals cut. The change from the old version of the rule was made largely to reduce the number of precautionary appeals taken as a result of the difficulty of determining whether several claims arose from a single transaction or occurrence. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

This rule expressly provides that in the absence of an express direction by a trial court for the entry of final judgment, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and an order or other form of decision is subject to revision at any time before entry of judgment adjudicating all of the claims. *Broadway Roofing & Supply, Inc. v. District Court*, 140 Colo. 154, 342 P.2d 1022 (1959); *Forbes v. Goldenhersh*, 899 P.2d 246 (Colo. App. 1994).

By its terms, C.R.C.P. 56(d) involves an adjudication of less than the entire action, and consequently, a disposition pursuant to that rule does not purport to be a final judgment. Instead, a trial court remains free to reconsider an earlier partial summary judgment ruling absent the entry of judgment under section (b) of this rule. *Forbes v. Goldenhersh*, 899 P.2d 246 (Colo. App. 1994).

Except as provided in section (b) of this rule, a final judgment is one which ends the particular action in which it is entered, leaving nothing further to be done in determining the rights of the parties involved in the action. *Berry v. Westknit Originals, Inc.*, 145 Colo. 48, 357 P.2d 652 (1960); *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982).

"Final judgment" defined. Only those orders which finally resolve a claim may be certified as final judgments pursuant to this section. *Ball Corp. v. Loran*, 42 Colo. App. 501, 596 P.2d 412 (1979).

A decision on the merits is a final judgment for appeal purposes despite any outstanding issue of attorney fees, and certification pursuant to this rule is not a prerequisite to appellate review of the merits of a case if a judgment has been entered and only the issue of attorney fees remains to be determined. *Baldwin v. Bright Mortg. Co.*, 757 P.2d 1072 (Colo. 1988).

Determination of relief required for final judgment. A trial court's order determining that defendants are liable does not

constitute the final resolution of a claim for purposes of this section unless and until the trial court determines what relief, if any, may be secured. *Ball Corp. v. Loran*, 42 Colo. App. 501, 596 P.2d 412 (1979).

A default judgment that completely disposes of petitioner's claim against defendant individually constitutes a final and appealable judgment for certification under this rule even though other plaintiffs' claims are unresolved. *Kempter v. Hurd*, 713 P.2d 1274 (Colo. 1986).

A judgment is not final which determines the action as to less than all of the defendants, except as provided in section (b) of this rule. *Berry v. Westknit Originals, Inc.*, 145 Colo. 48, 357 P.2d 652 (1960).

When a summary judgment disposes of less than the entire action, the judgment is not final unless the trial court expressly determines that there is no just reason for delay and directs the entry of a final judgment. *Manka v. Martin*, 200 Colo. 260, 614 P.2d 875 (1980), cert. denied, 450 U.S. 913, 101 S. Ct. 1354, 67 L. Ed. 2d 338 (1981).

However, all defendants are potentially jointly and severally liable and subject to judgment as to which finality rule applies unless there has been a specification of only joint liability. *Corporon v. Safeway Stores, Inc.*, 708 P.2d 1385 (Colo. App. 1985).

Before an appeal can be brought, all claims for relief in a case must be resolved by final judgment unless section (b) or another rule or statutory section is applicable. *Alexander v. City of Colo. Springs*, 655 P.2d 851 (Colo. App. 1982).

Denial of a motion for summary judgment is not a final appealable order. *Town of Grand Lake v. Lanzi*, 937 P.2d 785 (Colo. App. 1996).

A final judgment can only enter when the trial court has nothing further to do to determine the rights of the parties involved, unless the judgment meets the requirements of section (b) of this rule. *Hamm v. Twin Lakes Reservoir & Canal Co.*, 150 Colo. 447, 373 P.2d 525 (1962).

Trial court erred in certifying summary judgment in third-party action as final since, at time of judgment, attorney fees, interest, and costs which were part of primary action had not yet been determined. *Corinthian Hill Metro. Dist. v. Keen* , 812 P.2d 721 (Colo. App. 1991).

This rule applies only to a final decision of one or more, but not all, claims for relief. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

Because a certification pursuant to section (b) applies to a final decision of one or more but not all claims for relief, the trial court retains jurisdiction over those portions of the case not affected by the judgment certified as final for appeal. *Nelson v. Elway*, 971 P.2d 245 (Colo. App. 1998).

The effect of this rule is to permit the trial court to advance the time when such a final decision could be appealed. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

Trial court makes determination of finality. Under this rule the trial court, not the parties or their counsel, may make the

required determination of finality. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

A trial court may, by the exercise of its discretion in the interest of sound judicial administration, release for appeal final decisions upon one or more, but less than all, claims in multiple claims actions. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

The trial court had discretion to certify its adjudication of two allegations, in spite of pending counterclaims. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

The timing of such a release is vested by this rule in the discretion of the trial court as the one most likely to be familiar with the case and with any justifiable reasons for delay. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

A substantial delay between the entry of a ruling and the filing of the section (b) motion caused by nonmovant's failure to prosecute the case does not prevent the court from certifying the ruling as final. *LoPresti v. Brandenburg*, 267 P.3d 1211 (Colo. 2011).

Certification of final judgment is appropriate only when more than one claim for relief is presented in an action, or when multiple parties are involved, and there are claims or counterclaims remaining to be resolved. *San Miguel County Bd. of County Comm'rs v. Roberts*, 159 P.3d 800 (Colo. App. 2006).

In deciding whether to issue a section (b) certification with respect to a decision which does not dispose of the entire case in a multiple claims action, a trial court must engage in a three-step process. First, it must determine that the decision to be certified is a ruling upon an entire "claim for relief". Next, it must conclude that the decision is final in the sense of an ultimate disposition of an individual claim. Finally, the trial court must determine whether there is just reason for delay in entry of a final judgment on the claim. *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Troxel v. Town of Basalt*, 682 P.2d 501 (Colo. App. 1984); *Pub. Serv. Co. of Colo. v. Linnebur*, 687 P.2d 506 (Colo. App. 1984), aff'd, 716 P.2d 1120 (Colo. 1986); *Lytle v. Kite*, 728 P.2d 305 (Colo. 1986); *Keith v. Kinney*, 961 P.2d 516 (Colo. App. 1997); *Carothers v. Archuleta County Sheriff*, 159 P.3d 647 (Colo. App. 2006); *Richmond Am. Homes of Colo., Inc. v. Steel Floors, LLC*, 187 P.3d 1199 (Colo. App. 2008).

Certification under section (b) of this rule is improper if the ruling sought to be appealed disposes of one or more claims against some, but not all, of the parties who may be jointly, but not severally, liable and there remains in the trial court a claim or claims against one or more of the remaining parties who, because of the certification, are not before the appellate court. *Hall v. Bornschelgel*, 740 P.2d 539 (Colo. App. 1987).

For certification under section (b) to be proper, a full adjudication of rights and liabilities regarding appealed claim is necessary. *Corinthian Hill Metro. Dist. v. Keen*, 812 P.2d 721 (Colo. App. 1991).

Certification under section (b) is not required before a judgment can be given preclusive effect for purposes of collateral estoppel. *Carpenter v. Young*, 773 P.2d 561 (Colo. 1989).

Absent certification by the trial court under this rule, a judgment that disposes of fewer than all of the claims in an action may not be appealed. Estate of *Burford v. Burford*, 935 P.2d 943 (Colo. 1997).

A decree of dissolution when entered by the district court is final to dissolve the marriage even when the district court refuses to certify the decree as a final judgment appealable under this rule. *Estate of Burford v. Burford*, 935 P.2d 943 (Colo. 1997).

The same rules of finality apply in probate cases as in other civil cases. An order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Section (b) governs the interlocutory appeal of a probate court order. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Court has discretion in determining "just reason for delay". The task of assessing whether there is just reason for delay is committed to the trial court's sound judicial discretion, and review of a trial court's ruling on that question is limited to an inquiry into whether that discretion has been abused. *Hardin Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Georgian Health Center v. Colonial Paint*, 738 P.2d 809 (Colo. App. 1987).

It is within the trial court's discretion to determine whether there is just reason for delay, and such determination will not be disturbed absent an abuse thereof. The trial court's assessment of equities will be disturbed only if its conclusion was clearly unreasonable. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

The discretion accorded the trial court under this rule is limited, and does not permit the court to declare that which is not final under the rules to be final. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

A trial court's determinations that a claim for relief is the subject of the decision sought to be certified and that the decision is final are not truly discretionary as the correctness of these two determinations is fully reviewable by an appellate court because the trial court cannot in the exercise of its discretion, treat as final that which is not final. *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Kelly v. Mid-Century Ins. Co.*, 695 P.2d 752 (Colo. App. 1984); *Lytle v. Kite*, 728 P.2d 305 (Colo. 1986).

Court abused its discretion in refusing to reconsider and vacate partial summary judgment in favor of one of several defendants where, following defendant's belated production of a key document, an issue as to a material fact was seen to arise. *Halter v. Waco Scaffolding & Equip. Co.*, 797 P.2d 790 (Colo. App. 1990).

Discretion must be exercised with extreme care. Trial court's decision in certifying one of its orders must be exercised with extreme care where a pending counterclaim is involved, and this is particularly true where the counterclaim arguably arises from the same transaction or occurrence as the adjudicated claim. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

Order denying motion for summary judgment not final order. Since an order denying a motion for summary judgment is not a final order, a trial court is without power to declare it to be final and appealable. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

Certification by a trial court is not binding upon the appellate courts. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

Where a trial court issues a certificate, a reviewing court has no jurisdiction unless the trial court has power to do so, but the trial court's determination that it has such power is not binding upon the appellate court. *Trans Cent. Airlines v. McBreen & Assocs.*, 31 Colo. App. 71, 497 P.2d 1033 (1972).

An appellate court thus will review de novo the legal sufficiency of a trial court's certification. *Richmond Am. Homes of Colo., Inc. v. Steel Floors, LLC*, 187 P.3d 1199 (Colo. App. 2008).

In order to effect a final judgment, thus rendering it reviewable, a trial court should (1) expressly determine that there is no just reason for delay and (2) expressly direct the entry of a judgment. *Fidelity & Deposit Co. v. May*, 142 Colo. 195, 350 P.2d 343 (1960).

Trial court properly concluded that there was no just reason for delay in entering final judgment for the defendant because it had granted summary judgment in favor of the defendant on all of plaintiffs' claims. The trial court made its order in favor of the defendant a final judgment for purposes of section (b). It was not necessary for the trial court to address the defendant's counterclaim once it had disposed of the plaintiffs' claims. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Finality under this rule contemplates more than the rendition of a judgment. *Fidelity & Deposit Co. v. May*, 142 Colo. 195, 350 P.2d 343 (1960).

A determination under this rule must be made in order to pave the way for the filing of an appeal. Allied Colo. *Enters. Co. v. Grote*, 156 Colo. 160, 397 P.2d 225 (1964).

Failure to procure an express finding by a trial court so that an appeal can be properly pursued is fatal. *Smith v. City of Arvada*, 163 Colo. 189, 429 P.2d 308 (1967).

Where, in granting a motion for summary judgment, a court expressly determines that there is no just reason for delay, directs that it be a final judgment, and dispenses with the necessity of filing a motion for new trial, there is created justifiable cause for review by an appellate court under section (b) of this rule. *Hynes v. Donaldson*, 155 Colo. 456, 395 P.2d 221 (1964).

Where appealed claims are factually distinct from the retained claims-i.e., they arise from different transactions or occurrences-multiple "claims for relief" are present, and the current rule may be applied just like the old rule. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

Appealable unit is claim for relief. Under the present version of F.R.C.P. 54(b) and section (b) of this rule, the

appealable judicial unit is a "claim for relief", and a "claim, counterclaim, cross-claim or third-party claim" may be a separate unit. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

Where dismissed claims and a retained counterclaim are not so inherently inseparable or intertwined, certification of dismissal of the claims was not an abuse of discretion. *Ireland v. Wynkoop*, 36 Colo. App. 206, 539 P.2d 1349 (1975).

The trial court may not certify an order as a final judgment pursuant to this rule after the notice of appeal has been filed. *Levine v. Empire Sav. & Loan Ass'n*, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975), overruled in *Musick v. Woznicki*, 136 P.3d 244 (Colo. 2006).

Trial court not authorized to enter judgment without assertion of claim for relief. This rule does not authorize the trial court to enter judgment against a party when no claim for relief has been asserted against that party by the party in whose favor the judgment is to be entered. *A.R.A. Mfg. Co. v. Brady Auto Accessories, Inc.*, 622 P.2d 113 (Colo. App. 1980).

Order dismissing class action aspects of the case determined the legal insufficiency of the complaint as a class action, and therefore, in its legal effect, it is "tantamount to a dismissal of the action as to all members of the class other than petitioners ". *Levine v. Empire Sav. & Loan Ass'n*, 192 Colo. 188, 557 P.2d 386 (1976).

Trial court's order granting class action certification is not an ultimate disposition of an individual claim. *Soto v. Progressive Mtn. Ins. Co.*, 181 P.3d 297 (Colo. App. 2007).

Trial court's C.R.C.P. 54(b) certification of its order granting class action certification as a final judgment was improper. *Soto v. Progressive Mtn. Ins. Co.*, 181 P.3d 297 (Colo. App. 2007).

Decree of dissolution of marriage final. Section 14-10-105 provides that the Colorado rules of civil procedure apply to dissolution proceedings except as "otherwise specifically provided" in article 10 of title 14 ; and § 14-10-120 provides that a decree of dissolution of marriage is "final" when entered, subject to the right of appeal. The trial court is authorized to enter an order pursuant to section (b) of this rule, making the decree final for purposes of appeal. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Upon the entry of an order under section (b) of this rule, a decree of dissolution of marriage may be appealed prior to entry of permanent orders on the issues of child custody, support, and division of property. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Claims in a forcible entry and detainer action wherein damages as well as possession are sought are sufficiently severable that a final and appealable order may be issued as to possession while the claim for damages (rent owed) is reserved for future determination. *Sun Valley Dev. Co. v. Paradise Valley Country Club*, 663 P.2d 628 (Colo. App. 1983).

Complaint asserting single legal right states only single claim, even though multiple remedies may be sought for the alleged violation of that legal right. *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Messenger v. Main*, 697

P.2d 420 (Colo. App. 1985).

Where the plaintiff requests different remedies for relief, injunction, and damages, but the multiple remedies sought are to redress the violation of one legal right, only one claim is asserted, which, by virtue of its singularity, is not certifiable under section (b). *Alexander v. City of Colo. Springs*, 655 P.2d 851 (Colo. App. 1982).

For purposes of applying section (b), a "claim" is the aggregate of operative facts which give rise to a right enforceable in the courts, and the ultimate determination of multiplicity of claims rests on whether the underlying factual bases for recovery state a number of different claims which could have been separately enforced. *Corporon v. Safeway Stores, Inc.*, 708 P.2d 1385 (Colo. App. 1985).

More pragmatically stated, claims for relief are "multiple claims" for purposes of section (b) when a claimant pleads claims for which his possible recoveries are more than one and when a judgment rendered on one of his claims would not bar a judgment on his other claims. *Corporon v. Safeway Stores, Inc.*, 708 P.2d 1385 (Colo. App. 1985).

Disposition of only one of several elements of damages sought does not constitute an appealable ruling, even when purportedly certified as final under section (b). *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982).

Order dismissing availability of treble damages under the Colorado Antitrust Act was not a final disposition and therefore not ripe for appeal where claims for misappropriation and unjust enrichment were undecided by the trial court. *Smith v. TCI Commc'ns, Inc.*, 981 P.2d 690 (Colo. App. 1999).

Trial court's entry of certification under section (b) cannot transform an interlocutory decision into a final one absent dismissal of the arbitrable claims. *Ferla v. Infinity Dev. Assocs., LLC*, 107 P.3d 1006 (Colo. App. 2004).

Order preventing pursuit of claim for punitive damages is not final judgment. Partial summary judgment of the issue of punitive damages is an interlocutory rather than a final judgment for purposes of certification under section (b). *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982).

Summary judgment for portion of claim cannot be made final under rule. If the trial court enters a summary judgment for only a portion of a claim or counterclaim or any other order that falls short of fully adjudicating at least one claim or counterclaim, the order cannot be made final under this rule, despite an "express determination" and an "express direction". *Moore & Co. v. Triangle Constr. & Dev. Co.*, 44 Colo. App. 499, 619 P.2d 80 (1980).

Barring extraordinary circumstances, a judgment subject to C.R.C.P. 54(b) certification must be so certified in order to be considered final and sufficient to transfer jurisdiction to the court of appeals. Trial court retains jurisdiction to determine substantive matters when a party files a premature notice of appeal of a nonfinal judgment. *Musick v. Woznicki*, 136 P.3d 244 (Colo. 2006) (overruling *Levine v. Empire Sav. & Loan Ass'n*, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975)).

Trial court's language held to sufficiently comply with the requirements of section (b). *Chambliss/Jenkins Assocs. v. Forster*, 650 P.2d 1315 (Colo. App. 1982).

Rule as basis for jurisdiction. *Comstock v. Colo. Nat'l Bank*, 37 Colo. App. 468, 552 P.2d 514 (1976), modified on other grounds, 194 Colo. 28, 568 P.2d 1164 (1977); *Crownover v. Gleichman*, 38 Colo. App. 96, 554 P.2d 313 (1976), aff'd, 194 Colo. 48, 574 P.2d 497 (1977), cert. denied, 435 U.S. 905, 98 S.Ct. 1450, 55 L. Ed. 2d 495 (1978); *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976); *McIntire & Quiros of Colo., Inc. v. Westinghouse Credit Corp.*, 40 Colo. App. 398, 576 P.2d 1026 (1978).

Applied in *Hudler v. New Red Top Valley Ditch Co.*, 121 Colo. 489, 217 P.2d 613 (1950); *Hoff v. Armbruster*, 125 Colo. 324, 244 P.2d 1069 (1952); *McGlasson v. Hilton*, 155 Colo. 237, 393 P.2d 733 (1964); *Perlman v. Great States Life Ins. Co.*, 164 Colo. 493, 436 P.2d 124 (1968); *Cyr v. District Court*, 685 P.2d 769 (Colo. 1984); Floyd v. Coors Brewing Co., 952 P.2d 797 (Colo. App. 1997); Daly v. Aspen Ctr. for Women's Health, Inc., 134 P.3d 450 (Colo. App. 2005); *State ex rel. Salazar v. Gen. Steel Domestic Sales, LLC*, 129 P.3d 1047 (Colo. App. 2005); *Yadon v. Lowry*, 126 P.3d 332 (Colo. App. 2005); *Gunnison County Bd. of County Comm'rs v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006); *Richmond Am. Homes of Colo., Inc. v. Steel Floors, LLC*, 187 P.3d 1199 (Colo. App. 2008).

IV. Demand for Judgment.

Annotator's note. Since section (c) of this rule is similar to § 187 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Section (c) is identical and modeled after F.C.R.P. 54(c). *Dlug v. Wooldridge*, 189 Colo. 164, 538 P.2d 883 (1975).

Under section (c) of this rule, a judgment by default may not be different in kind or exceed in amount that prayed for in the demand for judgment. *Barnard v. Gaumer*, 146 Colo. 409, 361 P.2d 778 (1961); *Toplitsky v. Schilt*, 146 Colo. 428, 361 P.2d 970 (1961); *Burson v. Burson*, 149 Colo. 566, 369 P.2d 979 (1962); *Dept. of Welfare v. Schneider*, 156 Colo. 189, 397 P.2d 752 (1964).

Section 5-12-102 contains no requirement that town request statutory interest in its pleadings for court to award interest pursuant to section (c). *Town of Breckenridge v. Golforce, Inc.*, 851 P.2d 214 (Colo. App. 1992).

Both legal and equitable relief may be given in one action and in one judgment or decree. *Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg. Co.*, 155 Colo. 232, 393 P.2d 749 (1964).

Where a party has misconceived his remedy and is seeking relief to which he is not entitled under the law, this does not mean that his petition should be dismissed, for, if, under the allegations of the petition, he is entitled to any relief, a court upon a hearing may grant him the relief to which he is entitled regardless of the prayer in the petition. *Regennitter v. Fowler*, 132 Colo. 489, 290 P.2d 223 (1955).

The question, therefore, is not whether a party has asked for the proper remedy, but whether under his pleadings he is entitled to any remedy. *Regennitter v. Fowler*, 132 Colo. 489, 290 P.2d 223 (1955).

The rules of civil procedure were intended to deemphasize the theory of a "cause of action" and to place the emphasis

upon the facts giving rise to the asserted claim. *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961).

The substance of a claim rather than the appellation applied to the pleading by the litigant is what controls. *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961).

If from the allegations of a complaint the plaintiff is entitled to relief under any "theory", it is sufficient to state a claim. *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961).

Court will grant relief entitled. If a plaintiff has stated a cause of action for any relief, it is immaterial what he designates it or what he asked for in his prayer; the court will grant him the relief to which he is entitled under the facts pleaded. *Berryman v. Berryman*, 115 Colo. 281, 172 P.2d 446 (1946).

Court has duty to grant relief to which party entitled. Under this rule it is the duty of the court to grant relief to which a party is entitled, even though not specifically demanded in the prayer. *Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health*, 122 Colo. 147, 220 P.2d 872 (1950).

Should a court determine that the precise relief requested is not appropriate, other means may be formulated. *Davidson v. Dill*, 180 Colo. 123, 503 P.2d 157 (1972).

If a plaintiff declares his intention to seek a particular form of relief and to refuse all other relief, the legality or propriety of the relief sought might properly be determined on a motion to dismiss, though the complaint states facts entitling plaintiff to other relief than that he demands. *Berryman v. Berryman*, 115 Colo. 281, 172 P.2d 446 (1946).

Relief demanded as limiting relief granted. *Snell v. Pub. Utils. Comm'n*, 108 Colo. 162, 114 P.2d 563 (1941).

Equitable relief not precluded. Although the plaintiffs originally sought damages in an action at law, equitable relief was not precluded where a change in circumstances altered the posture of the case and rendered the original relief sought inappropriate. *Rice v. Hilty*, 38 Colo. App. 338, 559 P.2d 725 (1976); *Booth v. Bd. of Educ.*, 950 P.2d 601 (Colo. App. 1997), aff'd in part and rev'd in part on other grounds, 984 P.2d 639 (Colo. 1999).

If the evidence justifies an award, the particular theory pleaded will not prevent the award. *Johnson v. Bovee*, 40 Colo. App. 317, 574 P.2d 513 (1978); *Nix v. Clary*, 640 P.2d 246 (Colo. App. 1981).

Recovery is not limited to the amount specified in the complaint, and final judgment should be in the amount to which plaintiff is entitled where amount of damages can only be estimated at the pleading stage and defendant is provided with notice of the elements of the damage claim. *Worthen Bank & Trust v. Silvercool Serv. Co.*, 687 P.2d 464 (Colo. App. 1984).

Applied in *Bridges v. Ingram*, 122 Colo. 501, 223 P.2d 1051 (1950); *Morrissey v. Achziger*, 14 7 Colo. 510, 364 P.2d 187 (1961); *Colo. Ranch Estates, Inc. v. Halvorson*, 163 Colo. 146, 428 P.2d 917 (1967).

V. Costs.

Law reviews. For article, "Obtaining Costs for Clients Part 1", see 14 Colo. Law. 1974 (1985).

Section (d) violates neither the due process nor equal protection guarantees contained in the federal and state constitutions. The classification between governmental and non-governmental entities is rationally related to the goal of protecting the public treasury. *County of Broomfield v. Farmers Reservoir*, 239 P.3d 1270 (Colo. 2010).

Consistency with the principle of discretion in the assessment of costs is preserved by section (d) of this rule. *Greenwald v. Molloy*, 114 Colo. 529, 166 P.2d 983 (1946).

Generally, when costs are necessarily incurred in preparing for trial and because of litigation, reasonable costs may be awarded to the prevailing party, and trial courts may exercise their discretion in awarding such costs under this rule. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 55 P.3d 271 (Colo. App. 2002).

No discretionary authority in clerk to determine amounts allowable as expert witness fees or attorney fees. Discretionary authority is judicial function not properly delegable to the clerk of court. *Davis v. Bruton*, 797 P.2d 830 (Colo. App. 1990).

To omit an award of costs in a judgment is a proper form for a trial judge to use in "directing" that no costs be allowed a prevailing party. *Grange Mut. Fire Ins. Co. v. Golden Gas Co.*, 133 Colo. 537, 298 P.2d 950 (1956).

Although the omission of an award of costs is a proper form for denial of costs, the court must direct the denial. Coldwell Banker Com. *Group v. Hegge*, 770 P.2d 1297 (Colo. App. 1988).

The specific limitation in the second sentence of § 13-16-113(2) cannot reasonably be interpreted as a general prohibition extending to all motions for summary judgment brought under C.R.C.P. 56, and the defendant's entitlement to an award of costs was properly considered under section (d). *Spencer v. United Mortg. Co.*, 857 P.2d 1342 (Colo. App. 1993).

An award of costs is not prohibited by this rule even if a party is not entitled to costs under § 13-16-104 . *Weeks v. City of Colo. Springs*, 928 P.2d 1346 (Colo. App. 1996).

Because express provision for the award of costs was made in § 13-16-104 , this rule is inapplicable to the extent it makes the awarding of costs discretionary. *Nat'l Canada Corp. v. Dikeou*, 868 P.2d 1131 (Colo. App. 1993).

There is no indication that the provision in § 13-64-402 creating a mechanism for insurers to assert their subrogation rights for medical benefits paid to a plaintiff is meant to supplant a prevailing party's right to recover costs. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

A prevailing party is one that has succeeded upon a significant issue presented by the litigation and has achieved some of the benefits sought in the lawsuit. *Nat'l Canada Corp. v. Dikeou*, 868 P.2d 1131 (Colo. App. 1993).

The party in whose favor the decision or verdict on liability is rendered is the prevailing party, even where plaintiff received no monetary or other benefit from the jury's verdict. *Weeks v. City of Colo. Springs*, 928 P.2d 1346 (Colo.

App. 1996).

The test for determining a prevailing party in a contract case does not apply to a tort case. *Pastrana v. Hudock*, 140 P.3d 188 (Colo. App. 2006).

Where party prevails on some but not all of multiple claims, the trial court has broad discretion to determine which, if any, party was "the" prevailing party. *Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), aff'd on other grounds, 90 P.3d 228 (Colo. 2004); *Pastrana v. Hudock*, 140 P.3d 188 (Colo. App. 2006).

"Prevailing party" may include a defendant who does not assert counterclaims and, under certain circumstances, may include a defendant who is found partly liable. *Archer v. Farmer Bros. Co.*, 90 P.3d 228 (Colo. 2004).

A water court has the discretion to award costs to the prevailing party in a case to determine whether an application for water rights shall be granted. Once a case is before the water judge, it changes character. The application for water rights becomes litigation at the point it has moved from the jurisdiction of the water referee to the water court, and thus the water court is within its discretion to award costs. *Fort Morgan v. GASP*, 85 P.3d 536 (Colo. 2004).

"Prevailing party" status for award of costs must await the resolution of the claims pending in the water court. Matter of Application for Water Rights, 891 P.2d 981 (Colo. 1995).

Costs are not taxable against the sovereign unless the general assembly so directs. *Shumate v. State Pers. Bd.*, 34 Colo. App. 393, 528 P.2d 404 (1974); *McFarland v. Gunter*, 829 P.2d 510 (Colo. App. 1992); *Smith v. Furlong*, 976 P.2d 889 (Colo. App. 1999).

Costs may not be awarded against state entities pursuant to section (d) in the absence of express legislative authority for such awards. *Central Colo. Water v. Simpson*, 877 P.2d 335 (Colo. 1994).

A water court has the discretion to award costs against a mutual ditch company because a mutual ditch company is not a subdivision of the state. *County of Broomfield v. Farmers Reservoir*, 239 P.3d 1270 (Colo. 2010).

School district is exempt from an award of costs. Trial court erred in awarding costs against school district, which is a political subdivision of the state, because there was no express provision allowing for the costs. *Lombard v. Colo. Outdoor Ed. Center, Inc.*, 266 P.3d 412 (Colo. App. 2011).

Notwithstanding section (d) of this rule, § 13-16-111 allows a prevailing plaintiff in a C.R.C.P. 106(a)(4) action to recover costs against the state, its officers, or agencies. *Branch v. Colo. Dept. of Corr.*, 89 P.3d 496 (Colo. App. 2003).

Section 24-4-106(7) does not take precedence over this rule. While § 24-4-106(7) permits the court "to afford such other relief as may be appropriate", this provision cannot be construed to authorize assessment of costs against the state so as to take precedence over section (d). *Shumate v. State Pers. Bd.*, 34 Colo. App. 393, 528 P.2d 404 (1974).

In state's action to recover costs for treatment in state institutions, the trial court was without jurisdiction to assess

court costs against the executive branch of the state, or its officers. *State ex rel. Fort Logan Mental Health Ctr. v. Harwood*, 34 Colo. App. 213, 524 P.2d 614 (1974).

An award of costs is proper against a municipal corporation. *Kussman v. City & County of Denver*, 671 P.2d 1000 (Colo. App. 1983).

Costs in challenge of driver's license revocation not recoverable. The trial court has no power to award costs to the plaintiff in a case challenging revocation of a driver's license under § 42-4-1202(3)(b), because there is no specific statutory provision allowing for such an award. *Lucero v. Charnes*, 44 Colo. App. 73, 607 P.2d 405 (1980).

Trial courts may exercise discretion to award costs to prevailing party unless there is a statute or rule specifically prohibiting the award of costs. *Rossmiller v. Romero*, 625 P.2d 1029 (Colo. 1981).

Prevailing plaintiff properly charged with defendant's post-offer costs where jury awarded plaintiff less than the defendant's offer. *Whitney v. Anderson*, 784 P.2d 830 (Colo. App. 1989).

The prevailing party for the award of costs is the one in whose favor the decision or verdict on liability is rendered even if the other party also prevailed in part on some of the claims involved in the case. *Mackall v. Jalisco Int'l, Inc.*, 28 P.3d 975 (Colo. App. 2001).

Even if each of the parties can arguably be viewed as having prevailed in part, the award of costs in such a situation is committed to the sole discretion of the trial court. *Mackall v. Jalisco Int'l, Inc.*, 28 P.3d 975 (Colo. App. 2001).

When a party prevailed on only one fairly minor issue and lost on every other substantial issue, the trial court did not abuse its discretion in finding that the party was not a prevailing party. *Farmers Reservoir & Irrigation Co. v. City of Golden*, 113 P.3d 119 (Colo. 2005).

The discretion of the trial court to award costs to a prevailing party is not limited to specific claims upon which the party prevailed, thus even if the prevailing party's expert witness fees were incurred solely in connection with a claim that was dismissed by the court, the award of those fees is proper. *Mackall v. Jalisco Int'l, Inc.*, 28 P.3d 975 (Colo. App. 2001).

Costs of third-party defendant properly divided between plaintiff and defendant when both had claims against third-party defendant since dismissal of the claims made third-party defendant the prevailing party against both. *Cobai v. Young*, 679 P.2d 121 (Colo. App. 1984); *Poole v. Estate of Collins*, 728 P.2d 741 (Colo. App. 1986).

Costs attributable to expert witness fees for expert witnesses that did not testify at trial were properly awarded. These costs were valuation expenses necessarily incurred by reason of the litigation and were necessary for the proper preparation for trial. *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

Costs may be awarded in tort action under the *Governmental Immunity Act. Lee v. Colo. Dept. of Health*, 718 P.2d 221 (Colo. 1986).

Trial court did not err in awarding plaintiff his costs pursuant to section (d) in his tort action under the Colorado Governmental Immunity Act. *Nguyen v. Reg'l Transp. Dist.*, 987 P.2d 933 (Colo. App. 1999).

Trial court in a far better position to determine whether the challenged costs were reasonable and necessary. Trial court did not abuse its discretion in awarding costs for: (1) Discovery deposition fees; (2) copies of discovery depositions; (3) copies of medical records for injuries not claimed at trial; (4) certain expert fees; (5) fees associated with photographs; and (6) non-itemized copy fees. *Nguyen v. Reg'l Transp. Dist.*, 987 P.2d 933 (Colo. App. 1999).

Even if court of appeals were to agree with RTD that trial court erred in awarding $2.65 in costs on the basis of mathematical errors that originated in plaintiff's bill of costs, any error falls within the scope of the maxim de minimus non curat lex. Hence, court declines to expend judicial resources remanding for correction of this negligible error. *Nguyen v. Reg'l Transp. Dist.*, 987 P.2d 933 (Colo. App. 1999).

Post-trial motion for the award of attorney fees is analagous to a request for taxing costs and should follow procedures established by section (d) of this rule and C.R.C.P 121, sec. 1-22. A trial court may address the issue of the award of attorney fees for services rendered in connection with the underlying litigation on a post-trial basis, whether or not counsel has previously sought to "reserve" the issue. *Roa v. Miller*, 784 P.2d 826 (Colo. App. 1989).

Attempt to have costs assessed pursuant to section (d) and C.R.C.P. 121, 1-22, was ineffective where court had previously reserved matter of costs for future hearing pursuant to C.R.C.P. 68. *Seymour v. Travis*, 755 P.2d 461 (Colo. App. 1988).

Costs may be assessed against the non-prevailing party where the purpose for imposing costs is to sanction counsel for improper conduct which led to a mistrial. *Koehn v. R.D. Werner Co., Inc.*, 809 P.2d 1045 (Colo. App. 1990).

Section (d) of this rule and § 13-16-104 are modified by § 13-17-202(1)(a)(II), which does not allow a party who rejects a settlement offer and recovers less at trial to recover his or her costs, even though that party is determined to be the prevailing party. *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999).

An offer of settlement as to "all claims" unambiguously includes attorney fees and costs if the only claim for attorney fees and costs appears in the complaint. The offer of settlement need not explicitly reference attorney fees and costs. *Bumbal v. Smith*, 165 P.3d 844 (Colo. App. 2007).

Court construed the Health Care Availability Act in harmony with § 13-16-105 and section (d) of this rule to allow a prevailing defendant to recover costs in a medical negligence action. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

Where a judgment has been successfully appealed, an award of costs previously entered on that judgment is no longer valid because, upon remand, that judgment no longer exists. Where a judgment has been successfully appealed, the identity of the prevailing party is still unknown, and only after the stage of the proceedings where a prevailing party can be identified will a court's order awarding costs be valid. Here, the judgment underlying the award

of costs in the first action was reversed, and the case was remanded for further proceedings. As a result, the board of county commissioners was no longer the prevailing party, and the order awarding costs, which was dependent on and ancillary to that vacated judgment, was reversed. The parties returned to the same positions they were in before the filing of the first action. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 55 P.3d 271 (Colo. App. 2002).

A trial court may award costs to a prevailing party for an expert witness who does not testify, but the court must find that such costs were reasonable. Because homebuilders concede that costs associated with two cost-accounting experts retained by board of county commissioners in the second action are reasonable, trial court's award of such costs is affirmed. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 55 P.3d 271 (Colo. App. 2002).

In view of issue at trial of whether fees charged by board were reasonable in relation to direct and indirect costs of building department, and knowledge of board's uniform building code expert in this area, trial court's award of costs for this witness was reasonable. The expert witness offered advice that may have been relevant to the preparation for the second action, and the board limited the expert witness' involvement in this case. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 55 P.3d 271 (Colo. App. 2002).

A ruling on a class certification is essentially a procedural one that does not ask whether the underlying claims are legally or factually meritorious, so such a ruling does not trigger the award of costs and fees under section (d). Reyher v. State Farm Mut. Auto. Ins. Co., 2012 COA 58, 280 P.3d 64.

VI. Against Partnership.

Law reviews. For note, "Necessity of Resorting to Firm Assets Before Levying on the Assets of an Individual Partner", see 8 Rocky Mt. L. Rev. 134 (1936).

Annotator's note. Since section (e) of this rule is similar to § 14 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Judgment against a partnership binds the joint property of the associates and the separate property of members duly served with process. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935).

A court has jurisdiction of partner who is served to proceed to final judgment against him. A judgment having been entered against a partnership and execution thereon having been returned unsatisfied, then, under the provisions of this rule a court has, and continues to have, jurisdiction of a partner who has been served with summons for the purpose of proceeding to final judgment against him. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935).

Any member being served with summons has notice that he may appear in the case and set up any defense to the partnership liability or to his liability as a partner. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935).

No personal judgment can be obtained against the partners not served, for, as to them, the judgment rendered could bind only their interests in the partnership property. *Peabody v. Oleson*, 15 Colo. App. 346, 62 P. 234 (1900);

Ellsberry v. Block, 28 Colo. 477, 65 P. 629 (1901); *Blythe v. Cordingly*, 20 Colo. App. 508, 80 P. 495 (1905); *Womack v. Grandbush*, 134 Colo. 1, 298 P.2d 735 (1956).

Section 13-50-105 is permissive and not mandatory, as partnership or a limited partnership may sue or be sued either in its common name or by naming its partners. *Frazier v. Carlin*, 42 Colo. App. 226, 591 P.2d 1348 (1979).

Section 13-50-105 and section (e) of this rule contain clear requirements that an individual partner must be named, personally served, and subjected to the jurisdiction of the court to seek recovery from the individual. Plaintiffs actually knew the identity of some of the individual partners but made a conscious decision not to name and serve them. The plaintiffs' judgment was enforceable only against the assets of the partnership. *Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998).

VII. Revival of Judgments.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950).

Revived judgments must be entered within 20 years after the entry of the judgment sought to be revived or the court will lose its jurisdiction to do so. *Mark v. Mark*, 697 P.2d 799 (Colo. App. 1984).

By its plain language section (h) requires notice to be served on the judgment debtor and provides the judgment debtor the opportunity to have issues tried and determined by the court. *Hicks v. Joondeph*, 232 P.3d 248 (Colo. App. 2009).

Where a judgment has been entered reducing child support arrears to a fixed sum, such judgment may be revived within 20 years after it was entered, regardless of the date that each child support payment became due. *Santarelli v. Santarelli*, 839 P.2d 525 (Colo. App. 1992).

Judgment lien, based on a domesticated out-of-state judgment, must be revived under Colorado procedural law for the lien to be extended. To extend a judgment lien beyond six years after the date of judgment, Colorado procedural law requires a judgment to be revived pursuant to section (h) and a transcript of the revival to be filed with the clerk and recorder. *Wells Fargo Bank, N.A. v. Kopfman*, 205 P.3d 437 (Colo. App. 2008), aff'd, 226 P.3d 1068 (Colo. 2010).

When a motion to revive a judgment is filed in sufficient time for the procedures of section (h) to be completed before the expiration of the original judgment, but court delays prevent a revived judgment from being entered before the judgment's expiration, then a revived judgment should be entered nunc pro tunc as of a date the motion could have been decided had there been no court delays. *Robbins v. Goldberg*, 185 P.3d 794 (Colo. 2008).

Cross References:

For effect of an order of dismissal, see C.R.C.P. 41(a) and (b) ; for pleadings, see C.R.C.P. 7(a) ; for masters' reports, see C.R.C.P. 53(e) ; for default judgments, see C.R.C.P. 55 ; for creditors' claims against estates, see part 8 of article 12 of title 15, C.R.S.; for service of process by publication, see C.R.C.P. 4(h) ; for provisions encompassing process,

see C.R.C.P. 4 .