

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

February 16, 2022

Christopher M. Wolpert
Clerk of Court

SNAP FINANCE LLC,

Petitioner,

v.

BRANDI WESLEY, on behalf of herself
and others similarly situated,

Respondent.

No. 21-600
(D.C. No. 2:20-CV-00148-RJS-JCB)
(D. Utah)

ORDER

Before **McHUGH, MORITZ, and ROSSMAN**, Circuit Judges.

This matter is before the court on Defendant-Petitioner Snap Finance LLC's Fed. R. App. P. 5 petition for permission to appeal pursuant to Fed. R. Civ. P. 23(f). Petitioner seeks permission to appeal the district court's September 21, 2021 memorandum decision and order granting certification to a class seeking relief under the Telephone Consumer Protection Act. Plaintiff-Respondent Brandi Wesley filed a response in opposition to the petition, and Petitioner filed a motion for leave to file a reply in support of its petition. We have considered the proposed reply in reaching our decision.

Whether to grant an interlocutory appeal from a class certification order is a decision entirely within the discretion of the court of appeals. *See* Fed. R. Civ. P. 23(f); *Vallario v. Vandehey*, 554 F.3d 1259, 1262 (10th Cir. 2009) (noting that the court's

discretion is “unfettered and akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari” (internal quotations omitted)). We are ever mindful that “interlocutory appeals are traditionally disfavored.” *Vallario*, 554 F.3d at 1262. As a result, “the grant of a petition for interlocutory review constitutes the exception rather than the rule.” *Id.* We have identified three categories of cases where interlocutory review of a district court’s class certification order is appropriate: (1) death knell cases (where the court’s certification order sounds the death knell for the plaintiff’s claims or makes settlement the only prudent course for the defendant); (2) cases raising unresolved issues of class action law that might evade end-of-case review; and (3) instances of manifest error by the district court. *Id.* at 1263.

Upon consideration of the pleadings and the materials submitted by the parties, we conclude that the circumstances of this case do not justify an interlocutory appeal. Although Petitioner argues in its petition that the district court’s decision was manifestly erroneous, we are not persuaded that the district court’s determinations regarding numerosity, predominance, ascertainability, or any other Fed. R. Civ. P. 23 factor amounted to manifest error. Accordingly, the motion for leave to file a reply in support of the petition is granted, and the petition for permission to appeal is denied.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



By: Candice Manyak
Counsel to the Clerk