

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID L. ROSS,
Appellant,
vs.
SORAYA ROSS,
Respondent.

No. 42787

FILED

DEC 29 2005

DAVID L. ROSS,
Appellant,
vs.
SORAYA ROSS,
Respondent.

No. 43191

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schade*
CHIEF DEPUTY CLERK

ORDER REINSTATING BRIEFING (NO. 42787),
AND ORDER DISMISSING APPEAL (NO. 43191)

These are consolidated appeals from a final divorce decree and a post-decree order enforcing the decree. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed potential jurisdictional defects, we ordered appellant to show cause why these appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the March order enforcing the decree was not substantively appealable and appellant did not appear aggrieved by the order. Appellant has filed a response, and on January 18, 2005, respondent filed a motion to dismiss the appeals.

The divorce decree was filed, nunc pro tunc, on January 13, 2004, to date back to May 11, 1996, and notice of the decree's entry was served by mail the same day. On February 6, 2004, appellant timely filed his notice of appeal from the decree (No. 42787). Thereafter, respondent moved the district court to enforce the decree. Appellant opposed respondent's motion and filed a countermotion to collect, from respondent, \$175,000 plus interest, awarded to appellant under the decree. On March 23, 2004, the district court entered an order that directed appellant to comply with the decree and to execute a quitclaim deed to respondent for the "Pico" property located in California. The order also reduced to judgment the amount respondent owed appellant, with interest, for a total amount of \$301,218.09. Notice of entry of the March order was served by mail on March 25, 2004, and appellant timely filed a notice of appeal from that order on April 20, 2004 (No. 43191).

In his response to our show cause order, appellant contends that he is aggrieved by the March order in that it affects his liability, given that neither party has an ownership interest in the Pico property, and the district court lacked jurisdiction over the property because it is owned by a California limited liability company. Moreover, appellant asserts that the March order is substantively appealable because it revised his rights and liabilities by requiring that any issues regarding profits and/or distributions he may have received from the Pico property, be addressed in a separate motion. Finally, appellant contends that the parties entered into a written novation in 2000 that supersedes the decree,

requiring appellant to sign a quitclaim deed would eviscerate the novation that both parties agreed to.

Respondent replies that appellant relinquished his interest in the Pico property when the LLC was created. Thus, the March order does not change anything and appellant is not aggrieved. In her motion to dismiss, respondent contends that a party who has taken advantage of a favorable judgment, or has acquiesced in its terms by enforcing it, will not be permitted appellate review. According to respondent, appellant acknowledges the nunc pro tunc decree as to the \$175,000 award, but asks this court to not enforce the decree as to the Pico property.

The documents before this court indicate that, before the district court entered the nunc pro tunc divorce decree it was aware that the Pico property had been transferred into the LLC. Thus, the March order merely enforces the divorce decree's distribution of specific property and assets, and does not revise the rights or liabilities of any party. Therefore, it is not a special order after final judgment.¹ Moreover, appellant is not aggrieved by the March order, within the meaning of NRAP 3A(a), because his personal right and/or right of property is not adversely and substantially affected by the district court's ruling.²

¹Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) (clarifying that a special order made after final judgment must affect the rights of some party to the action, growing out of the previous judgment).


²Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 605 P.2d 1149 (1980).

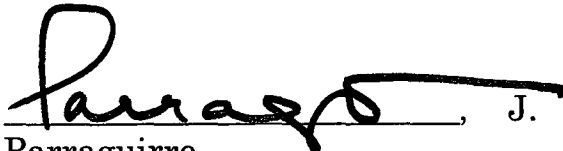
Accordingly, as we lack jurisdiction to consider the appeal from the March order, we dismiss Docket No. 43191.

As we have jurisdiction to consider the appeal in Docket No. 42787, we reinstate the briefing schedule. Appellant shall have ninety days from the date of this order within which to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Lyons Law Firm
Gregory G. Gordon
Clark County Clerk