

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN M. PYLE, AN INDIVIDUAL,  
Appellant,

vs.

MELVIN J. BAGLEY, INDIVIDUALLY,  
AS TRUSTEE AND AS DECLARANT;  
BARBARA BAGLEY, INDIVIDUALLY,  
AS TRUSTEE AND AS DECLARANT;  
AND THE BAGLEY FAMILY TRUST,  
Respondents.

STEVEN M. PYLE, AN INDIVIDUAL,  
Appellant,

vs.

MELVIN J. BAGLEY, INDIVIDUALLY,  
AS TRUSTEE AND AS DECLARANT;  
BARBARA BAGLEY, INDIVIDUALLY,  
AS TRUSTEE AND AS DECLARANT;  
AND THE BAGLEY FAMILY TRUST,  
Respondents.

No. 44176

**FILED**

APR 25 2006

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

No. 44731

ORDER ALLOWING APPEAL IN DOCKET NO. 44176 TO PROCEED  
AND DISMISSING APPEAL IN DOCKET NO. 44731

These are consolidated appeals challenging, among other things, a district court judgment directing specific performance and a subsequent district court order awarding attorney fees and costs to respondents. On March 7, 2006, we directed appellant to show cause why these appeals should not be dismissed for lack of jurisdiction based on several apparent jurisdictional defects. Appellant filed his response on March 29, 2006.

In our March 7 order, we first noted that, with regard to the appeal in Docket No. 44176, it appeared that the district court had not

entered a final written judgment adjudicating all the rights and liabilities of all the parties.<sup>1</sup> Specifically, it appeared that appellant's counterclaims remained pending below. We therefore directed appellant that, if his counterclaims did remain pending below, he must obtain a written, file-stamped order resolving the counterclaims and transmit a copy of that order to this court. In response to our show cause order, appellant, as directed, obtained a written, file-stamped order, resolving his counterclaims. As this order resolves the only claims that remained pending below, we conclude that this order, filed in the district court on March 16, 2006, is the final judgment in the underlying case.<sup>2</sup> Although the notice of appeal in Docket No. 44176 was premature in light of the claims that remained pending below when the appeal was filed, under NRAP 4(a)(6), appellant's notice of appeal is deemed filed on March 16, 2006. Accordingly, jurisdiction over the appeal in Docket No. 44176 is properly vested in this court and this appeal may proceed.

In our show cause order, we further noted that, with regard to the appeal in Docket No. 44731, to the extent that it appeared that the district court had not yet entered a final appealable judgment, the order granting in part and denying in part respondents' motion for attorney fees and costs and granting in part and denying in part respondents' motion to require appellant to post a supersedeas bond pending appeal did not appear to be appealable as a special order after final judgment under NRAP 3A(b)(2). We further indicated that if the district court were to enter an order finally resolving appellant's counterclaims, and such order

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<sup>1</sup>See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

<sup>2</sup>See id.

constituted the final judgment in the underlying case, then it appeared that the order challenged in Docket No. 44731 would still not be appealable as a special order after final judgment.

Appellant, in his response, maintains that the order challenged in Docket No. 44731, is appealable as a special order made after final judgment under NRAP 3A(b)(2) because it affects the rights of a party growing out of the final judgment. We disagree. Generally, to be an appealable special order after final judgment, the order must revise a party's rights or obligations as established in the final judgment.<sup>3</sup> As previously discussed, the March 16, 2006 order dismissing appellant's counterclaims is the final judgment in the underlying case. The order challenged in Docket No. 44731, however, was filed on January 26, 2005, over a year before the March 16 final judgment was entered. Accordingly, as the order challenged in this appeal was entered prior to the entry of the final judgment in the underlying case, it could not have revised any party's rights or obligations as established in the final judgment. Therefore, the challenged order is not appealable as a special order after final judgment.<sup>4</sup> As no other statute or court rule authorizes an appeal from this type of order, we therefore conclude that we lack jurisdiction over the appeal in Docket No. 44731 and we order that appeal dismissed.<sup>5</sup>

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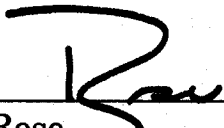
<sup>3</sup>Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

<sup>4</sup>Id.

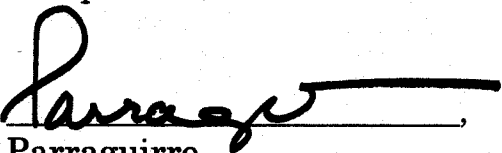
<sup>5</sup>See NRAP 3A(b) (listing orders that may be appealed); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (noting that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

Although the order challenged in Docket No. 44731 is not appealable as a special order after final judgment, this order may be challenged in the context of the appeal from the final judgment in Docket No. 44176.<sup>6</sup> Accordingly, we will consider the issues raised in appellant's briefs concerning the order challenged in Docket No. 44731 in our review of Docket No. 44176.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Christopher G. Gellner  
Pengilly Law Firm  
Clark County Clerk

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<sup>6</sup>See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (providing that, generally, interlocutory orders may be challenged within the context of an appeal from the final judgment).