

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.A. JONES CONSTRUCTION  
COMPANY,  
Appellant,  
vs.  
LEHRER MCGOVERN BOVIS, INC.;  
AND NATIONAL FIRE INSURANCE  
COMPANY OF HARTFORD,  
Respondents.

No. 45032

**FILED**

DEC 21 2005

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order, on remand, staying the underlying action pending restitution and continuing trial. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the order designated in the notice of appeal is not substantively appealable, because no statute or rule authorizes an appeal from an order staying proceedings and continuing trial.<sup>1</sup>

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<sup>1</sup>See NRAP 3A(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (recognizing that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 419, 404 P.2d 902, 905 (1965) ("An order granting or denying a stay of proceedings is not among [the list of statutorily appealable determinations]."); Rosenthal v. Rosenthal, 39 Nev. 74, 76, 153 P. 91, 92 (1915) (noting that "[a]n order of  
*continued on next page . . .*

In response, appellant contends that the district court's order is substantively appealable as a final judgment, as an order granting an injunction, and because it is void. In the event we disagree, appellant requests us to treat its appeal as a petition for a writ of mandamus. Respondents oppose each of appellant's contentions and its request.

An appeal may be taken from a final judgment in an action or proceeding.<sup>2</sup> A final judgment "disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."<sup>3</sup> Here, despite appellant's assertion to the contrary, even if appellant is unable to pay restitution, the district court's stay order did not effectively leave the court with nothing to consider in the future. Ultimately, if the matter is not brought to trial, the court must formally determine whether dismissal is appropriate under NRCP 41(e) or otherwise dispose of the matter.<sup>4</sup>

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the trial court in allowing or dismissing [a] motion for continuance is not of itself an appealable order").

<sup>2</sup>See NRAP 3A(b)(1).

<sup>3</sup>Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); see also KDI Sylvan Pools v. Workman, 107 Nev. 340, 342-43, 810 P.2d 1217, 1219 (1991).

<sup>4</sup>Cf. KDI Sylvan Pools, 107 Nev. at 342-43, 810 P.2d at 1219 (emphasizing the need for an order formally dismissing claims, even though a plaintiff may not be inclined to pursue those claims). Appellant also points to several federal court decisions in which an order that puts parties "effectively out of court" was considered appealable under the federal finality requirements. See, e.g., Lockyer v. Mirant Corp., 398 F.3d 1098 (9th Cir. 2005), cert. den. ; CTF Hotel Holdings, Inc. v. Marriott Intern., Inc., 381 F.3d 131 (3d Cir. 2004). We note that this doctrine applies only when "the sole purpose and effect of the stay is precisely to  
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An appeal may also be taken from an order granting an injunction.<sup>5</sup> Appellant argues that the district court's order essentially granted a mandatory injunction because it required appellant, in order to proceed with the trial, to "undo" its alleged wrongful act of retaining money paid by [respondent]."<sup>6</sup>

Injunctions provide relief from future wrongful conduct.<sup>7</sup> As pointed out by the Ninth Circuit Court of Appeals, injunctions are (1) directed to a particular party, (2) enforceable by contempt, and (3) designed to accord or protect substantive relief.<sup>8</sup> Thus, the district court's order granting an injunction must specify the reasons for its issuance and

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surrender jurisdiction of a federal suit to a state court." Moses H. Cone Hospital v. Mercury Constr. Corp., 460 U.S. 1, 10 n.11 (1983). This matter does not raise the same finality issues as do the federal stays, and we decline to adopt the federal courts' approach in this instance.

<sup>5</sup>See NRAP 3A(b)(2); State ex. rel. List v. Mirin, 92 Nev. 503, 506, 553 P.2d 966, 967 (1976).

<sup>6</sup>See Dodge Bros. v. General Petroleum Corp., 54 Nev. 245, 249, 10 P.2d 341, 342 (1932) (Ducker, J., concurring) (recognizing that injunctions either restrain or require a person to do a particular act); Leonard v. Stoebling, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986) ("Mandatory injunctions are used to restore the status quo, to undo wrongful conditions.").

<sup>7</sup>See Dodge Bros., 54 Nev. at 249, 10 P.2d at 342 (1932) (Ducker, J., concurring); Catrett v. Landmark Dodge, Inc., 560 S.E.2d 101, 106 (Ga. Ct. App. 2002).

<sup>8</sup>Orange Cty. v. Hongkong & Shanghai Banking Corp., 52 F.3d 821, 825-26 (9th Cir. 1995); see also NRCP 65 (delineating the requirements that must be met before injunctions are issued).

the act to be undone.<sup>9</sup> Additionally, in this state, “the requirement for the filing of a bond is essential to the validity of an injunction.”<sup>10</sup>

The order does not meet the above requirements. For instance, it was issued without the posting of a bond, the court specified no reasons for granting any injunctive relief, and the portion of the order concerning restitution does not appear to be enforceable by contempt. Instead, the order merely stayed the district court proceedings until restitution is made. Thus, it is more akin to a stay order and is not an appealable order granting an injunction.<sup>11</sup>

Finally, appellant has pointed to no relevant authority, and we have discovered none, that permits an appeal to be taken from an order, otherwise nonappealable, simply because it may be void.<sup>12</sup> Therefore, the order granting a stay and continuing trial is not substantively appealable.

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<sup>9</sup>NRCP 65(d).

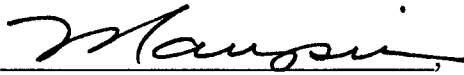
<sup>10</sup>Brunzell Constr., 81 Nev. at 420, 404 P.2d at 905; see NRCP 65(c).

<sup>11</sup>Brunzell Constr., 81 Nev. at 419, 404 P.2d at 905; see also Arkansas Dept. of Human Resources v. Hudson, 994 S.W.2d 488 (Ark. 1999) (refusing to construe an order staying an agency’s decision as an injunction, because it did not determine issues presented in the complaint).

<sup>12</sup>The cases cited by appellant, Osman v. Cobb, 77 Nev. 133, 360 P.2d 258 (1961) (noting that this court is able to consider an appeal from a void order, in the context of discussing the district court’s lack of jurisdiction or authority to enter the order) and Chapman v. Justice Court, 29 Nev. 154, 86 P. 552 (1906) (same), are inapposite.

As writ petitions must meet specific statutory and rule-based requirements that do not pertain to appeals,<sup>13</sup> we decline appellant's invitation to construe this appeal as a petition for a writ of mandamus. Accordingly, since we lack jurisdiction, we

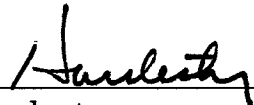
ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Haney, Woloson & Mullins  
McDermott, Will & Emery/Chicago, IL  
Harrison Kemp & Jones, LLP  
Clark County Clerk

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<sup>13</sup>See NRS Chapter 34; NRAP 21.