

IN THE SUPREME COURT OF THE STATE OF NEVADA

BEN MADDOX AND INGRID MADDOX,
Appellants,
vs.
FEDEX GROUND PACKAGE SYSTEMS,
INC., A DELAWARE CORPORATION;
AND STEVE STALLINGS, AN
INDIVIDUAL,
Respondents.

No. 45058

FILED

JAN 23 2006

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order that granted respondents' motion for summary judgment. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Respondents have moved to dismiss this appeal on the basis that the district court did not enter a final judgment. Appellants oppose the motion.

For a final judgment to exist, all claims must be formally resolved by order of the district court.¹ Here, the district court, pursuant to the parties' contract, compelled appellants to arbitrate their contract claims² and stayed the related proceedings. The district court's order granting summary judgment in favor of respondents on appellants' tort claims, then, is only a partial summary judgment. The district court has never formally resolved all the claims raised in appellants' May 2003

¹KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991).

²No appeal lies from the district court's order compelling arbitration. See NRS 38.247; Kindred v. Dist. Ct., 116 Nev. 405, 996 P.2d 903 (2000) (providing that an order compelling arbitration is not appealable).

complaint. As no appeal lies from an order granting a partial summary judgment,³ and because, under the Uniform Arbitration Act,⁴ cases filed in the district court remain under its jurisdiction throughout arbitration,⁵ we lack jurisdiction to entertain this appeal.

We note, however, once the district court enters an order either confirming or denying confirmation of any arbitration award, modifying or correcting an award, vacating an award without directing a rehearing, or enters any other final judgment, appellant may appeal and, in the context of that appeal, may challenge the district court's order


³See Lee v. GNLV Corp., 116 Nev. 424, 428 n. 4, 996 P.2d 416, 418 n. 4 (2000) (recognizing that, absent a certification of finality pursuant to NRCP 54(b), orders granting partial summary judgment are not appealable).

⁴NRS 38.206.


⁵See, e.g., NRS 38.221(7) (compelling the district court to stay any judicial proceedings involving a claim subject to arbitration); NRS 38.234 (recognizing the district court's continuing jurisdiction to enforce any preaward rulings of the arbitrator); see also Drake Bakeries v. Bakery Workers, 370 U.S. 254, 264 (1962) (acknowledging the preference to stay district court proceedings pending arbitration); International Ass'n of H. & F. I. & A. W., L. 66 v. Leona Lee Corp., 434 F.2d 192, 194 (5th Cir. 1970) (recognizing a district court's retention of jurisdiction pending arbitration as an "accepted practice"); May Const. Co., Inc. v. Thompson, 20 S.W.3d 345, 350-52 (Ark. 2000) (interpreting corresponding provisions of Arkansas' Uniform Arbitration Act, and concluding that the district court retains jurisdiction throughout the arbitration process); Wesley Retirement Services v. HLM, 594 N.W.2d 22, 28 (Iowa 1999) (recognizing that orders compelling arbitration are interlocutory, that allowing them to be appealed defeats the purpose of arbitration, and that, where a district court compelled the arbitration of contract claims while tort claims remained before the court, "such an order does not dispose of the court action, but merely imposes a stay pending the outcome of the arbitration").

granting summary judgment to respondents.⁶ Accordingly, we grant respondents' motion and

ORDER this appeal DISMISSED.⁷


_____, J.

Maupin


_____, J.

Gibbons


_____, J.

Hardesty

cc: Hon. Brent T. Adams, District Judge
Patrick O. King, Settlement Judge
Laub & Laub
Downey Brand LLP
Seyfarth Shaw LLP
Washoe District Court Clerk

⁶See NRS 38.247; Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (providing that this court on appeal from the final judgment may properly consider interlocutory orders).

⁷We determine that sanctions are unwarranted, and thus we deny respondents' request that this court issue sanctions.