

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERICHO CORPORATION,
Appellant,
vs.
FRICCION, INC., A NEVADA
CORPORATION; AND GHASSAN
MERHI, AN INDIVIDUAL,
Respondents.

No. 45122

FILED

AUG 16 2005

J. Powell
JANE W. POWELL
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting partial summary judgment. Eighth Judicial District Court, Clark County; Jackie Glass, District Judge.

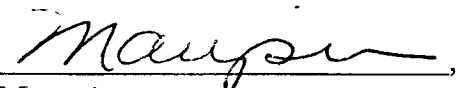
Respondents have filed a "Motion to Dismiss Appeal and Request for Attorney's Fees and Sanctions." As cause for that motion, respondents aver that the order being challenged on appeal is not an appealable order. Specifically, respondents note that appellant's claims against third party defendants El Premier Nightclub, Connie Pena, and Richard Pena remain pending below and that the district court did not certify its order pursuant to NRCP 54(b). See NRAP 3A(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule). Because of this jurisdictional defect, respondents request this court to impose sanctions against appellant and to award attorney fees to respondents under NRAP 38(b).¹

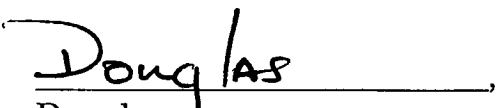
¹ NRAP 38(b) provides that this court may award attorney fees when an appeal has been filed frivolously, for purposes of delay, or whenever the appellate process has been violated.

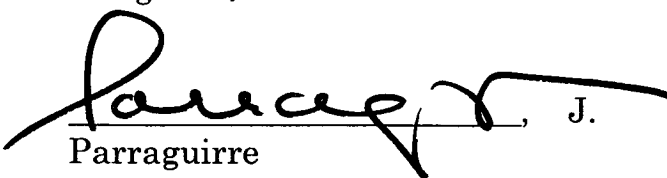
Appellant has filed a response to the motion. In that response, counsel for appellant “acknowledges . . . that he has erred in filing the Appeal, . . . apologizes to the Court for this error and acknowledges that the appeal should forthwith be dismissed.” Appellant opposes respondents’ request for sanctions and attorney fees, noting that the “error [in filing the appeal] was made in good faith” and that counsel had mistakenly believed the order was a final judgment.

Cause appearing, we grant respondents’ motion in part, and dismiss this appeal. We decline, however, to impose sanctions or award attorney fees. The filing of a jurisdictionally deficient notice of appeal, by itself, does not warrant the imposition of sanctions or the awarding of attorney fees under NRAP 38(b).

It is so ORDERED.²

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
William F. Buchanan, Settlement Judge
Edward G. Marshall
T. James Truman & Associates
Clark County Clerk

² We deny respondents’ motion for leave to file a reply to appellant’s response to the motion to dismiss.