

IN THE SUPREME COURT OF THE STATE OF NEVADA

ACE FIRE SYSTEMS, INC., A NEVADA CORPORATION,

Appellant/Cross-Respondent,

vs.

DICK CORPORATION, A PENNSYLVANIA CORPORATION,

Respondent/Cross-Appellant,

and

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, A

FOREIGN CORPORATION,

Respondent.

DICK CORPORATION, A PENNSYLVANIA CORPORATION, AND NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, A FOREIGN CORPORATION, Appellants,

vs.


ACE FIRE SYSTEMS, INC., A NEVADA CORPORATION,

Respondent.

No. 43273

FILED

OCT 14 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

No. 45309

ORDER DISMISSING APPEAL (DOCKET NO. 45309)
AND DENYING MOTIONS TO STRIKE AND
FOR SANCTIONS (DOCKET NO. 43273)

Docket No. 43273 is an appeal and cross-appeal from a judgment entered after a bench trial and an appeal from an order denying attorney fees. Docket No. 45309 is an appeal from a district court order denying a motion for certification of intent to amend the judgment.

Docket No. 45309

Respondent Ace Fire Systems, Inc. has moved to dismiss the appeal in Docket No. 45309 for lack of jurisdiction. Appellants Dick Corporation and National Fire Insurance Company oppose the motion. Having considered the motion and opposition, we conclude that we lack jurisdiction over the appeal. The district court denied appellants' motion to certify the court's inclination to amend the judgment under Huneycutt v. Huneycutt.¹ To be appealable as a special order made after a final judgment, the order must affect the rights of some party growing out of the judgment previously entered.² Here, the order does not change the parties' rights as to the original judgment. Accordingly, we grant respondent's motion and dismiss this appeal.³

Respondent also requests sanctions under NRAP 38, which authorizes this court to award costs and attorney fees if it determines that an appeal is frivolous. We decline to impose sanctions in this case.

Docket No. 43273

Appellant Ace Fire Systems has moved to strike portions of Dick Corp.'s opening brief on cross-appeal and for sanctions in Docket No. 43273. Ace Fire Systems argues that certain arguments made by Dick Corp. on behalf of National Fire Insurance are immaterial and improperly included in the brief because National Fire Insurance did not appeal from

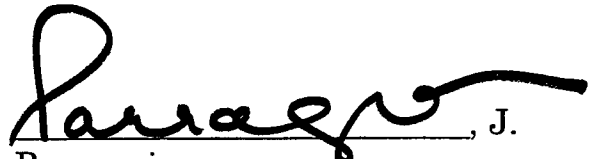
¹194 Nev. 79, 575 P.2d 585 (1978).

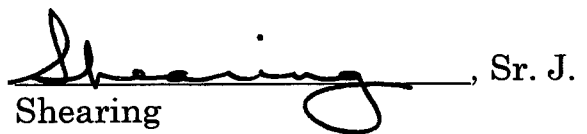
²NRAP 3A(b)(2); Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

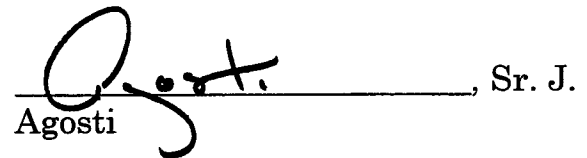
³In light of our order, we deny Dick Corp.'s June 29, 2005 motion to consolidate these appeals, and we relieve appellants of their obligation to comply with NRAP 9 (transcripts), as we directed on September 7, 2005.

the judgment. While we deny Ace Fire Systems' motion to strike and request for sanctions, we agree that since National Fire Insurance did not appeal, arguments on its behalf are not proper, and thus we will disregard them in resolving the merits of this matter.

It is so ORDERED.⁴


Parraguirre, J.


Shearing, Sr. J.


Agosti, Sr. J.

cc: Hon. Mark R. Denton, District Judge
Bill C. Hammer, Settlement Judge
Dixon, Truman & Fisher
Lindborg, Mead, Drill & Pezzillo, LLP
Clark County Clerk

⁴The Honorable Miriam Shearing, Senior Justice, and the Honorable Deborah A. Agosti, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 14, 2005.