

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND PAUL ROSAS,
Appellant,
vs.
WILLIAM T. STOCKMANN,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF HOMER
MITCHELL STOCKMANN,
DECEASED,
Respondent.

No. 45573

FILED

OCT 27 2005

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

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order granting respondent's motion for summary judgment against appellant and denying appellant's motion to dismiss. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Based on the documents before this court, it appears that we lack jurisdiction over this appeal. First, we note that it appears that the district court has not entered a final written judgment adjudicating all the rights and liabilities of all the parties, and that the district court did not certify its order as final pursuant to NRCP 54(b).¹ Respondent's lawsuit

¹Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

appears to remain pending below against several of appellant's co-defendants.

Moreover, even if the order had been certified as final pursuant to NRCP 54(b), it appears that NRCP 54(b) certification would not have been proper. Given that the action against the remaining defendants appears to have arisen from the same series of events as the action against appellant, the remaining parties would likely be prejudiced by the certification of the challenged order as final and such prejudice would likely outweigh any prejudice to appellant in being forced to wait until a final, appealable order or judgment has been entered to bring his appeal.²

Finally, to the extent that appellant seeks to challenge the district court's denial of his motion to dismiss, we note that the denial of a motion to dismiss does not remove a party from an action and thus is not amenable to NRCP 54(b) certification. NRCP 54(b) certification is not available to provide interlocutory appellate review where the district court's decision does not constitute a final adjudication of the rights and liability of fewer than all the parties to an action.³ The denial of appellant's motion to dismiss did not finally adjudicate the rights and liability of any party to the action, therefore the denial of his motion is not amenable to NRCP 54(b) certification.

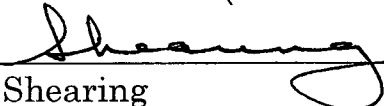
²Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

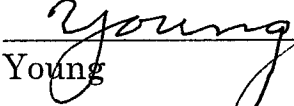
³Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

Based on the foregoing analysis, it appears that we lack jurisdiction over this appeal. Accordingly, we

ORDER the appeal DISMISSED.⁴


_____, C.J.
Becker


_____, Sr. J.
Shearing


_____, Sr. J.
Young

cc: Hon. Steven R. Kosach, District Judge
Raymond Paul Rosas
Van Ry Law Offices, LLP
Washoe District Court Clerk

⁴In light of this order, we deny as moot petitioner's August 10, 2005, motion for relief. Additionally, although appellant has indicated that he requested permission to proceed in forma pauperis in the district court, pursuant to NRAP 24(a), he has not transmitted a copy of a district court order granting or denying his request to this court. Appellant's failure to pay the filing fee or demonstrate compliance with NRAP 24(a) thus could constitute an independent basis for dismissing this appeal. The Honorable Miriam Shearing, Senior Justice, and the Honorable Cliff Young, Senior Justice, participated in the decision of this matter under general orders of assignment entered on July 14, and July 18, 2005.