

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PETERSON, A/K/A MIKE
PETERSON, D/B/A HOME PLANNERS, LLC,
Appellant,
vs.
TORY PANKOPF AND PATRICIA PANKOPF,
Respondents.

No. 45665

FILED

NOV 17 2005

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order that granted an “ex parte motion for an order to turnover the computer aided drafting [CAD] file re the [respondents’] residence.” Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Respondents have filed a motion to dismiss the appeal, arguing that the order is not substantively appealable. Respondents argue that the order granting their ex parte motion for an order to compel Peterson to turn over the CAD file containing the design for their home is not an order granting an injunction, which is appealable under NRAP 3A(b)(2). They also assert that because the order merely granted an ordinary motion, it is not a final, appealable order under NRAP 3A(b)(1). Appellant Michael Peterson opposes the motion, arguing that (1) he was never properly served with the ex parte motion, (2) even assuming service was proper, he was not given the required ten working days to oppose the motion, and (3) the order “is a temporary restraining order and specie of injunction” that is appealable under NRAP 3A(b)(2).

Injunctions provide relief from future wrongful conduct,¹ and orders granting injunctions are appealable.² A temporary restraining order may be granted without notice only if it is clear that immediate and irreparable injury will result to the applicant before the adverse party can be heard.³ But a temporary restraining order is not appealable as an injunction unless the order's legal effect is to grant or deny an injunction.⁴ Additionally, in this state, "the requirement for the filing of a bond is essential to the validity of an injunction."⁵

Since respondents did not identify immediate and irreparable injury in their ex parte motion, the order granting the motion does not comply with requirements for granting a temporary restraining order.⁶ And although the order granting respondents' ex parte motion arguably had a scope that reached beyond a temporary period, it was issued without the posting of a bond and thus does not fall within the definition of a valid

¹See Leonard v. Stoebling, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986) ("[m]andatory injunctions are used to restore the status quo, to undo wrongful conditions"); Catrett v. Landmark Dodge, Inc., 560 S.E.2d 101, 106 (Ga. Ct. App. 2002).

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

³NRCP 65(b).


⁴Sugarman Co. v. Morse Bros., 50 Nev. 191, 255 P. 1010 (1927).


⁵Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 420, 404 P.2d 902, 905 (1965); see NRCP 65(c).

⁶See NRCP 65(b).

preliminary injunction.⁷ Appellant maintains that the order was a type of injunction or an invalid temporary restraining order. Respondents argue that it was an order granting an ordinary motion. We agree with respondents. The order was issued without regard to the requirements for issuing an injunction or restraining order. Instead, it required that appellant turn over a computer file that contained the same information that appellant had already provided to respondents in paper form. Thus, it was more akin to a discovery order, and thus is not an appealable order.⁸ Accordingly, we

ORDER this appeal DISMISSED.⁹


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁷See NRCP 65(c); Dangberg Holdings v. Douglas Co, 115 Nev. 129, 145, 978 P.2d 311, 321 (1999) (acknowledging that, in most circumstances, the district court's failure to require a bond voids a preliminary injunction).

⁸See NRAP 3A(b)(1); see also e.g., Archie v. Pierce, 88 Nev. 182, 495 P.2d 363 (1972) (denial of a motion to vacate a sheriff's sale to set aside deed where pending complaint sought same relief not appealable); Sunrise Hospital v. Dailey, 109 Nev. 950, 860 P.2d 162 (1993) (order that grants or denies discovery without adjudicating rights of any party is interlocutory in nature and not appealable).

⁹In light of this order, we deny as moot respondents' motion to file a reply to appellant's opposition to the motion to dismiss.

cc: Hon. Brent T. Adams, District Judge
Richard G. Hill
Tory M. Pankopf
Washoe District Court Clerk