

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD RONGA,
Appellant,
vs.
VALLEY ELECTRICAL ASSOCIATION,
INC., A NEVADA CORPORATION; AND
BUD LARUE CONSTRUCTION,
Respondents.

No. 46395

FILED

JUL 17 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court summary judgment, certified as final under NRCP 54(b), in favor of respondent Valley Electrical Association (VEA). Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed two potential jurisdictional defects, we directed appellant to show cause why this appeal should not be dismissed. First, we directed appellant to address the status of the other named defendants in this action, pointing out that, although the district court's summary judgment acknowledged that Blue Horizon, LLC, Blue Horizon Investments, Inc., and Bud LaRue Construction had joined in VEA's summary judgment motion, the district court's order specifically granted summary judgment on all of appellant's claims to VEA only, and did not otherwise address the other defendants' joinder to the motion. We also noted that appellant's docketing statement was inconsistent in that it indicated that all parties except VEA were

dismissed, but also indicated that Bud LaRue Construction remained a party in the district court.

Second, we directed appellant to address whether the district court properly certified as final its summary judgment in favor of VEA, noting that it appeared that no party had been completely removed from the action. In particular, although summary judgment was entered in VEA's favor on all of appellant's claims, the summary judgment did not address VEA's third-party complaint against Desert Sand & Gravel, Inc., or its cross-claims against the other named defendants. Thus, it appeared that the summary judgment did not completely remove VEA as a party and that the order was therefore not amenable to NRCP 54(b) certification. Accordingly, we specifically directed appellant to submit documentation establishing this court's jurisdiction including, "any order formally resolving VEA's cross-claims, any order resolving the other defendants' joinder to VEA's summary judgment motion, and, as appellant suggested in his docketing statement, any formal written order(s) dismissing the other defendants from this action."

Appellant has responded, again asserting that "defendants Blue Horizon and Desert Sand and Gravel and Bud LaRue Construction were previously dismissed from this action," but again failing to provide any formal written dispositional order(s) to support this assertion. Appellant also asserts that "Defendant/Respondent Bud LaRue Construction has previously been dismissed from this action" and the "caption for this matter erroneously contains Bud LaRue Construction as a Respondent." With regard to VEA's third-party complaint and cross-claims, appellant, citing former NRCP 54(b), contends that the district

court's NRCP 54(b) certification was proper because the district court "may direct the entry of a final judgment as to one or more but fewer than all of the claims." Without citation to authority, appellant also asserts that "this Court possesses jurisdiction to hear the appeal when more than one claim for relief, or a separate claim has been presented in the action." Appellant indicates that VEA's third-party complaint and cross-claims were based on indemnification and contribution, arising out of appellant's claims against VEA, and thus are sufficiently separate to allow for the present appeal.¹

NRCP 54(b) was amended effective January 1, 2005, and provides in pertinent part:

When multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Although former NRCP 54(b) allowed the district court to enter a final judgment as to one or more but fewer than all of the claims or parties, the revised NRCP 54(b) provides that the court may direct entry of a final judgment only as to one or more but fewer than all of the parties. In this case, the district court's order was entered on November 3, 2005, well after NRCP 54(b) was amended to exclude the provision that allowed for direction of a final judgment when fewer than all of the claims had been


¹VEA's third-party complaint and cross-claims also included a claim for attorney fees and costs.

finally resolved. Thus, because the summary judgment did not completely remove VEA as a party, it was not amenable to NRCP 54(b) certification.

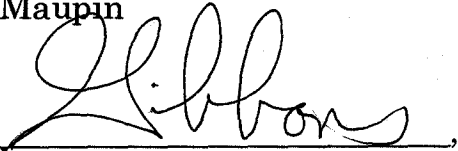
Moreover, appellant failed to comply with our directive that he provide a formal written order or orders that would demonstrate to this court that the other remaining defendants' joinder to VEA's summary judgment motion had been resolved or, as appellant suggested in both his docketing statement and his response to our show cause order, that the other named defendants had been earlier dismissed from this action. Thus, it continues to remain unclear whether these parties' rights and liabilities have been finally adjudicated.² Accordingly, because the district court's summary judgment in favor of VEA is not amenable to NRCP 54(b) certification, and because appellant has failed to provide any written order(s) demonstrating that VEA's third-party complaint and cross-claims have been finally resolved, and appellant has likewise failed to provide

²From a review of the district court clerk's minutes, it appears that summary judgment was granted in favor of Blue Horizon Investments on August 9, 2002, that Bud LaRue Construction's motion for summary judgment was denied on August 5, 2005, and that Blue Horizon's motion for summary judgment was denied on September 13, 2005. Regardless, even if the minutes had revealed that appellants claims against all of the named parties had been finally resolved, the district court clerk's minute order, and even an unfiled written order, are ineffective for any purpose, see Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987), and would provide no excuse for appellant's failure to provide written orders demonstrating this court's jurisdiction over his appeal. See Moran v. Bonneville Square Associates, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (noting that, since this court has limited appellate jurisdiction, jurisdiction is not presumed but, rather, "the burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction").

any order(s) demonstrating that his claims against the named defendants have been adjudicated, we lack jurisdiction to consider this appeal, and we ORDER this appeal DISMISSED.³

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Douglas W. Herndon, District Judge
William F. Buchanan, Settlement Judge
Bogges & Harker
Jones Vargas/Las Vegas
Ranalli, Zaniel & Jordan, LLC
Clark County Clerk

³In light of this order, we deny as moot respondent VEA's motion for a remand for correction of a clerical mistake in the judgment and to stay briefing pending a decision on the motion to remand.