

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MANGOLD,
Appellant,

vs.

CLARK COUNTY; PUBLIC
EMPLOYEES' RETIREMENT SYSTEM
OF NEVADA; AND THE COMMISSION
ON PEACE OFFICERS' STANDARDS
AND TRAINING, AN ARM OF THE
STATE OF NEVADA,
Respondents.

No. 46775

FILED

JUN 29 2006

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to certify an order as final under NRCP 54(b). Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Because our initial review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a jurisdictional defect, this court ordered appellant to show cause why this appeal should not be dismissed. Specifically, it appeared that the order designated in the notice of appeal is not substantively appealable¹ and that to the extent that appellant intended to designate the order granting summary judgment in favor of respondent Clark County, the notice of appeal was untimely filed.²

In response, appellant asserts that the district court's order denying the motion to certify its July 9, 2004, order granting summary

¹See NRAP 3A(b).

²See NRAP 4(a)(1); NRAP 26(c).

judgment accomplished the same thing as a certification order or a final judgment because it stated that “the rights and liabilities of all the parties in this matter have been adjudicated.” Respondent Clark County disputes that characterization of the district court’s order and instead argues that the district court’s July 9, 2004, order granting summary judgment was the final judgment or order in this case. We agree with Clark County.

On July 9, 2004, the district court granted Clark County’s motion for summary judgment. Appellant filed a notice of appeal from that order, which was docketed in this court as Docket No. 43762. When this court reviewed the documents submitted in that appeal, it was not clear whether the rights and liabilities of two other defendants, the Public Employees’ Retirement System (PERS) and the Commission on Peace Officers’ Standards and Training (the Commission), had been adjudicated and the district court had not certified the July 9 order under NRCP 54(b). Accordingly, this court ordered appellant to show cause why the appeal should not be dismissed, explaining that although it appeared that PERS and the Commission “might have been previously dismissed from the action,” appellant had not attached copies of any such written dispositions to his docketing statement or otherwise addressed those parties’ statuses, as required by docketing statement directives twenty-one and twenty-two.³ This court thus directed appellant to file a “fully completed amended docketing statement that includes all of the required attachments, including any district court orders disposing of appellant’s claims against

³Mangold v. Clark County, No. 43762 (Order to Show Cause, January 21, 2005).

[PERS] and [the Commission].”⁴ The order cautioned appellant that “failure to demonstrate that this court has jurisdiction may result in this court’s dismissal of this appeal.”⁵ In response, appellant did not provide copies of any district court orders disposing of the claims against PERS and the Commission; instead, appellant implied that the district court had not yet entered written dispositions involving all of the claims against those parties and conceded that this court did not have jurisdiction. This court therefore dismissed the appeal in Docket No. 43762.⁶

It now appears that contrary to appellant’s representations in response to the order to show cause in Docket No. 43762, the district court had entered written orders disposing of the claims against PERS and the Commission before it granted summary judgment to Clark County.⁷ Therefore, the July 9, 2004, order granting summary judgment was the final judgment in the district court action because it resolved the only claims pending at that time, those against Clark County, and it left nothing for the district court’s future consideration except for attorney fees and costs.⁸ When appellant went back to the district court after we

⁴Id. (emphasis added).

⁵Id.

⁶Mangold v. Clark County, No. 43762 (Order Dismissing Appeal, March 22, 2005).

⁷The district court granted PERS’ motion to dismiss on December 24, 2002, and the Commission’s motion to quash and dismiss on January 10, 2003.

⁸See Fernandez v. Infusaid Corp., 110 Nev. 187, 192, 871 P.2d 292, 295 (1994) (stating that an “order dismissing the only two defendants remaining in the action at that time” was the final order in district court
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dismissed the appeal in Docket No. 43762 and moved for an order certifying the July 9, 2004, order as final under NRCP 54(b), the district court understandably denied the motion because the July 9 order was not amenable to certification—it was already a final order.

The order designated in the current notice of appeal (the district court's January 10, 2006, order denying the motion to certify) is not substantively appealable.⁹ And that order cannot be treated as the final judgment because the district court had already entered the final judgment on July 9, 2004. Moreover, to the extent that appellant intended to designate the July 9, 2004, order, the notice of appeal was untimely as it was filed more than 18 months after appellant was served with notice of that order's entry.¹⁰ An untimely notice of appeal fails to vest jurisdiction in this court.¹¹ We acknowledge that appellant previously filed a timely notice of appeal from the July 9, 2004, order. However, after this court raised jurisdictional concerns, appellant failed to provide the documentation requested by this court and instead conceded that this

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action); Lee v. GNLV, 116 Nev. 424, 426-27, 996 P.2d 416, 417 (2000) (explaining that the finality of an order does not depend on its label but on what it substantively accomplishes and that a final judgment is "one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs").

⁹See Fernandez, 110 Nev. At 192, 871 P.2d at 295 (noting that an order certifying an order as final under NRCP 54(b) is not substantively appealable).

¹⁰NRAP 4(a)(1); NRAP 26(c).

¹¹See NRAP 3(a); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 185, 660 P.2d 980, 981 (1983).

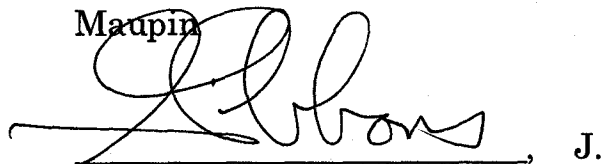
court lacked jurisdiction. Appellant cannot now cure that error by filing a notice of appeal from a district court order that is not substantively appealable.

Having considered the documents submitted to this court, including appellant's response to the order to show cause and respondent Clark County's reply, we conclude that we lack jurisdiction to consider this appeal. The order designated in the notice of appeal is not substantively appealable and the notice was untimely as to the order entered on July 9, 2004. Accordingly, we


ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jennifer Togliatti, District Judge
William F. Buchanan, Settlement Judge
Richard Segerblom
Attorney General George Chanos/Carson City
Attorney General George Chanos/DMV/Carson City
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk