

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Appellant,
vs.
CYNTHIA M. THOMAS,
Respondent.

No. 47518

FILED

OCT 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order partially granting judicial review in an employment discrimination matter and reinstating the matter before the Employee Management Relations Board (EMRB) for further proceedings under NRS Chapter 288. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

When our review of the documents before this court revealed a potential jurisdictional defect, we directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the district court's order was not a substantively appealable final order because it essentially remanded the matter for further proceedings before the EMRB.¹

Both parties timely responded to our show cause order. In its response, appellant concedes that this court has established, as a general proposition, that district court orders remanding a matter for further proceedings before an administrative agency are not final and appealable.

¹See Ayala v. Caesars Palace, 119 Nev. 232, 71 P.3d 490 (2003); NRAP 3A(b)(1).

Nonetheless, appellant asserts, this court appears to have recognized, and should recognize, an exception to this rule for appeals that present purely legal questions. Respondent disagrees.

An order is appealable as a final judgment under NRAP 3A(b)(1) when it resolves all of the claims and the rights and liabilities of all the parties in an action.² Typically, an order of remand is not appealable as a final judgment because it resolves neither the claims nor the rights and liabilities of any party.³ Here, the district court remanded the matter for further substantive proceedings before the EMRB with respect to the merits of respondent's complaint, and thus, neither the claims nor the rights and liabilities of any party have been finally resolved.⁴ Further, we have not adopted any exception to this rule,⁵ and we decline to do so here.⁶

²See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

³See, e.g., Ayala, 119 Nev. 232, 71 P.3d 490; Clark County Liquor v. Clark, 102 Nev. 654, 657-58, 730 P.2d 443, 446 (1986); Pueblo of Sandia v. Babbitt, 231 F.3d 878, 880 (D.C. Cir. 2000).


⁴See State, Taxicab Authority v. Greenspun, 109 Nev. 1022, 1025 862 P.2d 423, 425 (1993) (explaining that, when the district court does not finally resolve the question but instead remands the matter to an administrative agency to consider additional evidence, the court's order is not final and appealable); Pueblo of Sandia, 231 F.3d at 880 (providing that an order remanding a matter to an agency for significant additional proceedings is not final).

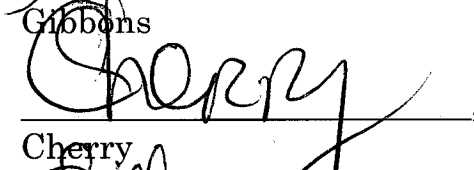
⁵See Greenspun, 109 Nev. at 1025, 862 P.2d at 425 (declining to adopt the "collateral order doctrine," which permits interlocutory appeals from certain non-final orders of remand); cf. Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996) (noting that this court takes a "functional view of finality," seeking to avoid piecemeal litigation, and

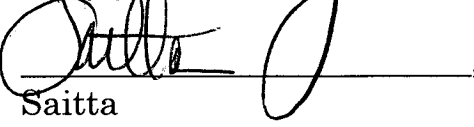
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Accordingly, we

ORDER this appeal DISMISSED.⁷


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

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thus, unlike an order remanding for further substantive proceedings, an order that resolves the single issue before the court, regarding substantive rights, and remands for a mere calculation of benefits, is appealable as a final judgment).

⁶While appellant points to several cases that, it asserts, appear to violate this rule (unless an exception for purely legal questions exists), none of those cases specifically addresses appellate jurisdiction over district court orders remanding the matter to an administrative agency. See City of Henderson v. Kilgore, 122 Nev. 331, 131 P.3d 11 (2006); State, Dep't Mtr. Veh. v. Evans, 114 Nev. 41, 952 P.2d 958 (1998); State, Dep't Mtr. Veh. v. Bremer, 113 Nev. 805, 942 P.2d 145 (1997). Accordingly, those cases create no exception to our general rule.

⁷We decline appellant's request to convert this appeal into a writ proceeding. Although we have rarely treated appeals as writ proceedings in the past, we generally have done so only when, by misdirection of this court, the parties otherwise would have been denied of an opportunity to request this court to consider or review a matter. See, e.g., Clark County Liquor, 102 Nev. 654, 730 P.2d 443. Those circumstances are not present here. Should appellant be aggrieved by the EMRB's decision on remand, it can petition the district court for judicial review, which would appear to constitute an adequate and speedy legal remedy precluding writ relief. Respondent's request for attorney fees and costs is denied.

cc: Hon. Valerie Adair, District Judge
Kathleen L. England, Settlement Judge
Marquis & Aurbach
Shook & Stone, Chtd.
Eighth District Court Clerk