IN THE SUPREME COURT OF THE STATE OF NEVADA

A AND H INSURANCE INC., AND WESTERN INSURANCE COMPANY,
Appellants,
vs.
JAEHN CONSTRUCTION WEST, A NEVADA CORPORATION,
Respondent.

No. 47882

FILED

JAN 05 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting a motion for reconsideration. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Specifically, although an order granting a motion for reconsideration is appealable as a special order after final judgment under NRAP 3A(b)(2),[1] it appeared that the June 28, 2006, order granting reconsideration in this case was not made after a final judgment. In particular, although the district court had entered a judgment and order on April 20, 2006, granting appellants' motion for summary judgment, that order entered judgment on respondent Jaehn Construction West's claims against appellants but did not resolve appellant Western Insurance Company's counterclaims against Jaehn. And because the

[1]See Bates v. Nevada Savings & Loan Ass'n, 85 Nev. 441, 443, 456 P.2d 450, 452 (1969) (providing that an order granting a motion for rehearing is appealable as a special order after final judgment).

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April 20, 2006, order did not appear to be a final judgment[2] and the district court had not otherwise disposed of the counterclaims,[3] the subsequent order granting reconsideration did not appear to be appealable as a special order after final judgment. Accordingly, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to that order, appellants argue that the April 20, 2006, summary judgment resolved the entire district court action. In support of this argument, appellants focus on the final paragraph of the order, which states that in addition to granting summary judgment in favor of defendants/appellants and dismissing the claims against defendants/appellants, "due to [Jaehn's] failure to attend the mandatory calendar call in accordance with EDCR 2.69(c), this action is dismissed" and the trial date is vacated. (Emphasis added.) Appellants argue that by using the term "action," the district court necessarily dismissed the entire case including the counterclaims.[4] Appellants conclude that "the district court specifically ordered the dismissal of the entire action at the request

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[2]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (holding that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-judgment matters).

[3]Cf. KDI Sylvan Pools v. Workman, 107 Nev. 340, 342, 810 P.2d 1217, 1219 (1991).

[4]Appellants rely on NRCP 2, which states that "[t]here shall be one form of action to be known as 'civil action,'" and EDCR 1.12(a), which defines "case" as used in the district court's local rules as including and applying "to any and all actions, proceedings and other court matters, however designated."

of [defendants/appellants] in granting summary judgment and as a sanction for [Jaehn's] failure to prosecute as set forth in the order." Respondent has filed a reply, arguing that the April 20, 2006, order was not a final judgment because it did not resolve the counterclaims and therefore the order granting reconsideration is not appealable as a special order after final judgment.

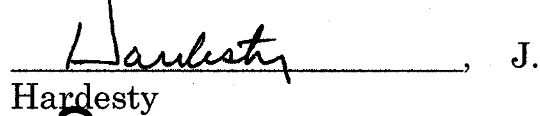
There are two problems with appellants' argument that the April 20, 2006, order was a final judgment. First, it does not appear that appellants' motion for summary judgment addressed the counterclaims; it only sought judgment in their favor on Jaehn's claims against them. And the district court order did not enter judgment on the counterclaims, which included claims for monetary damages. Second, it seems incongruous that the district court would sanction Jaehn for failing to attend the mandatory calendar call by dismissing Western's counterclaims against Jaehn. Given these circumstances, it appears more appropriate to interpret the district court's statement that "this action is dismissed" as a dismissal of Jaehn's action against appellants.

Furthermore, it is not plausible that the district court's April 20, 2006, order necessarily resolved the counterclaims. Although the complaint and counterclaims were based on the same contract and series of events, they involved different allegations and causes of action. By entering judgment against Jaehn on its claims, the district court did not necessarily determine that Western's counterclaims had merit or lacked merit. And absent a formal written order resolving the counterclaims,

they remained pending after entry of the April 20, 2006, order regardless of whether Western had any intent to pursue them.[5]

We conclude that the district court's order granting reconsideration is not appealable as a special order after final judgment because the district court had not entered a final judgment resolving all of the issues presented in the underlying action. We therefore lack jurisdiction over this appeal.[6] Accordingly, we

ORDER this appeal DISMISSED.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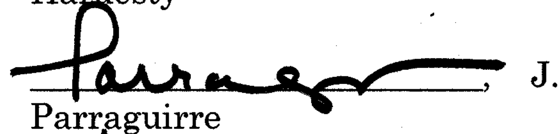
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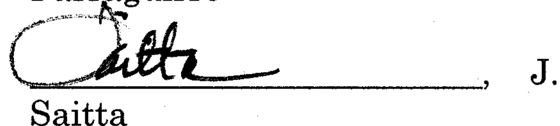
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cc: Hon. Douglas W. Herndon, District Judge
Howard Roitman, Settlement Judge
Faux & Associates, P. C.
Moran & Associates
Clark County Clerk
Marybeth Cook, Court Reporter

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[5]See KDI Sylvan Pools v. Workman, 107 Nev. 340, 342, 810 P.2d 1217, 1219 (1991) (stating that district court's order granting summary judgment to defendant on plaintiff's claims did not render moot defendant's counterclaim and fact that defendant "may not be inclined to pursue his counterclaim . . . does not render the counterclaim moot or operate as a formal dismissal of the claim").

[6]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).