

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY JIMENEZ GREEN,
Appellant,
vs.
C.A.K. LIMITED PARTNERSHIP, A
NEVADA LIMITED PARTNERSHIP,
Respondent.

No. 48164

FILED

MAR 23 2007

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

ORDER DISMISSING APPEAL

This is an appeal from an order awarding attorney fees. Eighth Judicial District Court, Clark County; Nancy M. Saitta, 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, it appeared that the district court's order might not be substantively appealable.¹ While a post-judgment order for attorney fees is generally appealable as a special order after final judgment,² it appears that no final judgment has been entered in this matter.

¹See NRAP 3A(b).

²Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995); Farmers Ins. Exchange v. Pickering, 104 Nev. 660, 765 P.2d 181 (1988); Schouweiler v. Yancey Co., 101 Nev. 827, 712 P.2d 786 (1985).

In the district court, respondent asserted claims against appellant and Jerry Green. Appellant then asserted counterclaims against respondent, cross-claims against Jerry Green, and third-party claims against Jenny Green. While the district court entered an order granting summary judgment for respondent against appellant and has dismissed appellant's counterclaims against respondent, it appears that all other claims, cross-claims and third-party claims are still pending in the district court. An order that resolves less than all of the claims or the rights and liabilities of all the parties in an action is not appealable as a final judgment absent proper NRCP 54(b) certification by the district court.³ In the absence of a final judgment, the order awarding attorney fees is not appealable as a special order after final judgment.⁴ Accordingly, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to the show cause order, appellant concedes that the order granting summary judgment for respondent against appellant is not a final order. However, appellant also extensively discusses whether, when denying appellant's motion for NRCP 54(b) certification, the district court properly stated that its order granting summary judgment for respondent "is in the character of an order granting an injunction," which would make it independently appealable pursuant to NRAP 3A(b)(2).

³See 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).

⁴See NRAP 3A(b)(2).

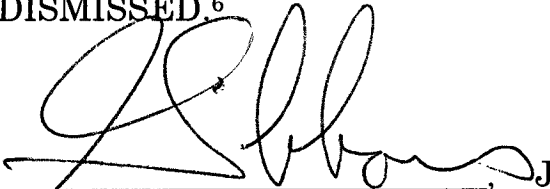
Respondent has filed a reply in which it requests this court to determine that three prior orders of the district court were independently appealable and that appellant waived her right to appeal those orders. Respondent also argues that if this court finds the three orders discussed in its reply to “operate as a final judgment as to the claims between the parties on appeal here,” then the order awarding attorney fees is appealable as a special order after final judgment pursuant to NRAP 3A(b)(2).

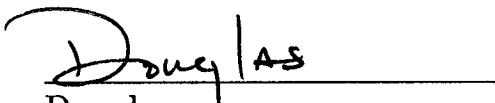
As noted in our order to show cause, regardless of whether the order granting summary judgment is independently appealable, if it was not a final judgment, the order awarding attorney fees is not appealable as a special order after final judgment. The same is true of the other orders respondent asserts are independently appealable.⁵ As long as claims, cross-claims and third-party claims are pending in the district court, as it appears there are, there is no final judgment in this matter. Because no final judgment has been entered in the district court, we lack jurisdiction

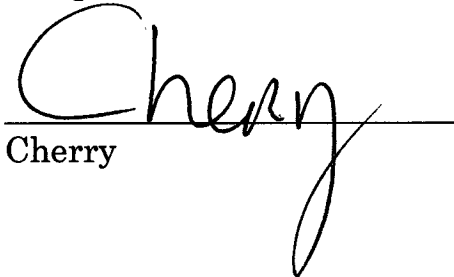
⁵Our concern here is whether we have jurisdiction to consider the order designated in the notice of appeal. In the context of the instant appeal, we decline respondent’s request to comment on the appealability of other orders entered by the district court.

to consider this appeal from an order awarding attorney fees. Accordingly,
we

ORDER this appeal DISMISSED.⁶


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 18, District Judge
William C. Turner, Settlement Judge
David J. Winterton & Associates, Ltd.
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk

⁶Appellant asserts that if this court dismisses this appeal, it must do so “without prejudice.” However, this court will only dismiss an appeal with prejudice. Once this court has dismissed an appeal, it generally may not be reinstated. Without expressing an opinion regarding the existence of remedies available to appellant after conclusion of proceedings below, including an appeal to this court, we note, generally, that any aggrieved party may appeal from a final judgment of the district court. NRAP 3A.