

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN RODRIGUEZ,  
INDIVIDUALLY, AND AS GUARDIAN  
AD LITEM OF FABIAN SANTIAGO, A  
MINOR CHILD,  
Appellant,

vs.

THE PRIMADONNA COMPANY, LLC,  
A NEVADA CORPORATION D/B/A  
BUFFALO BILL'S RESORT & CASINO,  
A/K/A PRIMM VALLEY CASINO  
RESORTS; AND MGM MIRAGE,  
Respondents.

No. 48415

**FILED**

**MAR 23 2007**

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

ORDER DISMISSING APPEAL

This is an appeal from a district court summary judgment in a personal injury tort action arising from an automobile accident. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Respondents have moved to dismiss this appeal, arguing that this court lacks jurisdiction to consider it because the order being appealed is not a final, appealable order.<sup>1</sup> In particular, respondents assert that, because their counterclaim against appellant and their third-party complaint for indemnity and contribution against several other parties involved in the accident remain pending, appellant's appeal from the summary judgment is not properly before this court. Appellant has not opposed the motion.

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<sup>1</sup>See NRAP 3A(b)(1).

Our review of the district court docket entries confirms that respondents have asserted a counterclaim against appellant and initiated a third-party complaint against several other parties. The order designated in the notice of appeal does not resolve respondents' counterclaim or third-party complaint, nor does it appear that the counterclaim or third-party claims have otherwise been resolved.<sup>2</sup> It therefore appears that the order designated in the notice of appeal was not a final, appealable order.<sup>3</sup> Further, there appears to be no other basis for this court having jurisdiction over this appeal until a final judgment is entered.

Additionally, even if the summary judgment order was appealable as a final judgment, it appears that appellant's notice of appeal was not timely filed. The district court entered the order granting summary judgment on October 4, 2006, and appellant was served with notice of the order's entry on the same date. The notice of appeal was not filed in the district court until November 9, 2006, after expiration of the

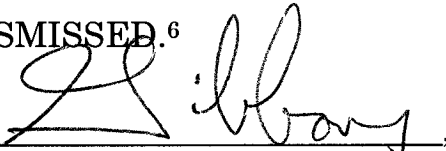
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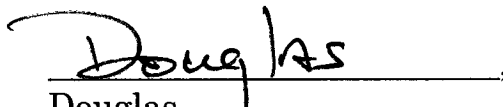
<sup>2</sup>See Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (noting, in analyzing a motion to dismiss an appeal to this court, that "only a written judgment has any effect").

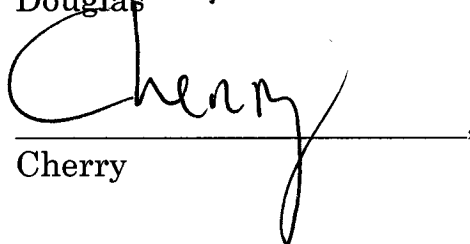
<sup>3</sup>See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (explaining that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-judgment matters).

30-day appeal period provided by NRAP 4(a)(1).<sup>4</sup> An untimely notice of appeal fails to vest jurisdiction in this court.<sup>5</sup>

For these reasons, we grant respondents' motion and we  
ORDER this appeal DISMISSED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Janet Trost, Settlement Judge  
White, Meany & Wetherall, LLP/Las Vegas  
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.  
Eighth District Court Clerk

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<sup>4</sup>See NRAP 26(c) (providing for 3 additional days when service is by mail).

<sup>5</sup>See NRAP 4(a)(1); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

<sup>6</sup>Upon review of the docketing statement, it appears that appellant brought this appeal in good faith and, therefore, respondents' NRAP 38-based request for attorney fees is denied.