

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUWAIDA DIAB,

Appellant,

vs.

IRENE M. HENSEL; MARWAN
ASAAD, A/K/A MARWAN ABDEL-AL;
HENSEL PROPERTIES, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY; IRENE M. HENSEL
FAMILY TRUST, A TRUST ENTITY OF
UNKNOWN TYPE; AND IRENE MAY
HENSEL REVOCABLE TRUST, A
TRUST ENTITY OF UNKNOWN TYPE,
Respondents.

No. 48635

FILED

AUG 31 2007

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Castella*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing a complaint. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Our preliminary review of the docketing statement, the response to 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 as a final judgment under NRAP 3A(b)(1) because it did not resolve respondents' counterclaims against appellant and third-party complaint against Fairouz Diab.¹ Accordingly, this court

¹See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (holding that an order that resolves less than all of the claims or the rights and liabilities of all of the parties in an action is not appealable as a final judgment under NRAP 3A(b)(1)); Rae v. All American Life & Cas. Co., 95

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ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant has responded to the show cause order, and respondents have filed a reply to that response.

Appellant presents four arguments in her response to the show cause order. Three of the arguments are based on appellant's assertion that the settlement judge made a "finding" that this court has jurisdiction over this appeal. In particular, based on the alleged finding by the settlement judge, appellant argues that: (1) respondents waived any objections to this court's jurisdiction by failing to timely object to the settlement judge's finding that this court has jurisdiction over this appeal, (2) the collateral estoppel doctrine precludes reexamination of the settlement judge's finding that this court has jurisdiction, and (3) it would be inequitable to revisit jurisdiction at this time after the parties have expended resources in settlement negotiations and relied on the settlement judge's finding that this court has jurisdiction. We reject these arguments. As a preliminary matter, we note that appellant provides no documentation supporting the representation that the settlement judge made a "finding" that this court has jurisdiction. However, more importantly, a settlement judge facilitating mediation of an appeal before this court under NRAP 16 has no authority to determine whether this

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Nev. 920, 605 P.2d 196 (1979) (explaining that when an action involves multiple parties, a judgment is not final unless it adjudicates all of the parties' rights and liabilities or it is properly certified as final under NRCP 54(b)).

court has jurisdiction over the appeal. It is solely the province of this court to determine whether it has jurisdiction over a particular case.²

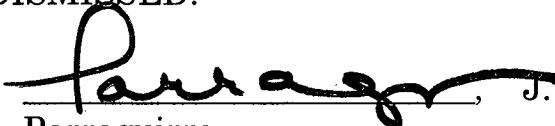
Appellant's fourth and final argument in response to the show cause order is that respondents' counterclaims and third-party complaint were filed in bad faith. Appellant points out that the counterclaim and third-party complaint was filed after the district court orally ruled on the motion to dismiss appellant's complaint. And appellant suggests that the oral ruling was a final judgment that precluded respondents from filing a counterclaim or third-party complaint. However, as this court has explained, "[t]he district court's oral pronouncement from the bench [and] the clerk's minute order . . . are ineffective for any purpose"³ because

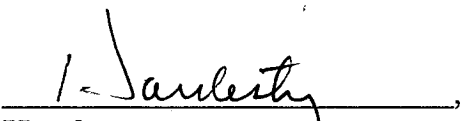
²See Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("Jurisdictional rules go to the very power of this court to act."). We also note that appellant's argument that a party can waive a challenge to this court's jurisdiction is incorrect. The case cited by appellant, Fritz Hansen A/S v. Dist. Ct., involves the rule that a defendant waives the right to challenge the trial court's personal jurisdiction over the defendant by failing to raise any objections to personal jurisdiction in a timely motion filed before a responsive pleading or in a responsive pleading such as an answer. 116 Nev. 650, 656-57, 6 P.3d 982, 986 (2000). That case says nothing about a waiver of objections to this court's jurisdiction over an appeal. Cf. Moran v. Bonneville Square Assocs., 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) ("Since this court is one of limited, appellate jurisdiction, we may not presume that we have jurisdiction over a docketed appeal. Rather, the burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction." (footnote omitted)); see also Scherer v. State, 89 Nev. 372, 374, 513 P.2d 1232, 1233-34 (1973) ("[J]urisdiction cannot be conferred upon an appellate court by the consent or stipulation of the parties or their counsel.").

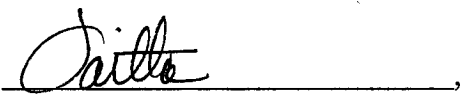
³Rust, 103 Nev. at 689, 747 P.2d at 1382.

before the entry of a written order, "the district court remains free to reconsider and issue a written judgment different from its oral pronouncement."⁴ Moreover, whether the counterclaims and third-party complaint were properly filed in the district court is, at this point, a matter for the district court to determine in the first instance. Until the district court disposes of the counterclaims and third-party complaint, they remain pending in the district court. As such, the order designated in the notice of appeal is not a final appealable judgment.⁵ We therefore lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.


Parraguirre J.


Hardesty J.


Saitta J.

cc: Eighth Judicial District Court Dept. 17, District Judge
Carolyn Worrell, Settlement Judge
Christina A. DiEdoardo
Lionel Sawyer & Collins/Las Vegas
Reade & Associates
Eighth District Court Clerk

⁴Id. at 688, 747 P.2d at 1382.

⁵See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).