IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MCKELVEY,
Appellant,
vs.
BRE, LLC,
Respondent.

No. 48783

FILED

JAN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting respondent's post-judgment petition for a writ of attachment. Eighth Judicial District Court, Clark County; Valorie Vega, 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: it appeared that the judgment or order designated in the notice of appeal is not substantively appealable.[1] In particular, this court observed that while NRAP 3A(b)(2) provides for an appeal from an order "dissolving or refusing to dissolve an attachment," the order here granted a writ of attachment. Because it appeared that no statute or rule authorizes an appeal from an order granting a petition for a writ of attachment, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.[2]

[1]See NRAP 3A(b).

[2]See 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).

In response to the show cause order, appellant argues that the district court's order is appealable under NRAP 3A(b)(2) as a special order made after final judgment. In particular, he argues that the order affects his "right to the homestead exemption monies being held in trust," grows out of the order awarding attorney fees to respondent, and affects respondent's "rights to execute upon th[e] judgment." Respondent has filed a reply, arguing that the order is not a special order made after final judgment because it does not alter or affect the rights of a party arising out of a final judgment. In particular, respondent argues that the order merely goes to its efforts to recover the attorney fees that the district court had awarded to it and did not alter its or appellant's rights arising out of the attorney fee order or the earlier final judgment in respondent's favor. We agree with respondent.

As this court explained in Gumm v. Mainor, a special order made after final judgment for purposes of NRAP 3A(b)(2) is one that "affect[s] the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment."[3] In that case, the order being appealed affected the appellant's right to receive the proceeds from the judgment in his favor because it ordered that part of the appellant's judgment proceeds be paid to various lien holders such that appellant would not receive all of the judgment proceeds.[4] In contrast, the order being appealed in this case does not affect either party's rights arising out of the judgment. Appellant

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[3]118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

[4]Id. at 919-20, 59 P.3d at 1225.

has been ordered to pay attorney fees and costs. Appellant did not appeal from that order, and the district court's order granting the writ of attachment does not affect appellant's obligation to pay the attorney fees and costs previously awarded or respondent's right to those fees and costs. We therefore conclude that the district court's order is not appealable under NRAP 3A(b)(2). Accordingly, this court lacks jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.[5]

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Hon. Valorie Vega, District Judge
William C. Turner, Settlement Judge
Adams & Rocheleau, LLC
Law Offices of Leslie Mark Stovall
Eighth District Court Clerk

[5]We deny respondent's pending motion for an extension of time to file the answering brief as moot. Nonetheless, based on the apparent confusion expressed in the motion and in appellant's response to the motion, we note that our prior order to show cause expressly stated on page 2 that "[t]he briefing schedule in this appeal shall be suspended pending further order of this court."