

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID VON RODENSTEIN,
Appellant,
vs.
RICHARD LEHMAN,
Respondent.

No. 48950

FILED

MAY 30 2007

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

ORDER DISMISSING APPEAL

On February 15, 2007, this court dismissed the related appeal in Docket No. 48168, pursuant to the stipulation of the parties after they had agreed to a settlement of both of these appeals. On February 23, 2007, counsel for appellant, attorney David J. Otto, submitted a letter addressed to the clerk of this court representing that the settlement agreement reached by the parties “dismissed all actions in the Supreme court.”¹ However, because the stipulation to dismiss only referenced the related appeal in Docket No. 48168, only that appeal was dismissed. On March 27, 2007, the parties filed a stipulation to dismiss this appeal.

On April 16, 2007, appellant submitted in both related appeals, in proper person, an “Emergency Request for: Emergency Order to Vacate Dismissal and Reinstate Appeal, Issue an Emergency Stay on

¹ We remind counsel that a request for relief from this court must be presented by way of a formal, written motion, not through an informal letter addressed to the clerk of the court. See In re Petition to Recall Dunleavy, 104 Nev. 784, 769 P.2d 1271 (1988).

All Actions from the Void Judgment Issued by the District Court,” and an “Emergency Request for: Submission.” On May 21, 2007, appellant submitted supplements to those documents. Appellant alleges that during the settlement conference “certain statements were made . . . by [his] attorney . . . and the Settlement Judge . . . that were misstatements of the law and fraudulent.” Further, appellant avers that he “reluctantly agreed to settle and signed an agreement to settle under duress and under false pretenses.” Accordingly, appellant states that he wishes to “rescind [the] agreement” and requests this court to reinstate his “right to appeal the erroneous decision in this case.” Finally, appellant makes several allegations of malpractice on the part of counsel during this appeal.²

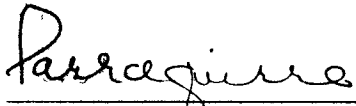
This court’s settlement conference program is mandatory to the extent that once an appeal is assigned to the program, and unless the settlement judge recommends the appeal be removed, parties and counsel must attend any scheduled settlement conference and follow all procedural rules. The decision of whether or not to agree to a settlement, however, lies solely with each party. See NRAP 16. Here, it appears that both parties and all counsel participated in a settlement conference and came to an agreement to resolve this appeal. Further, the parties filed a valid stipulation to dismiss this appeal. Under these circumstances, we decline to disturb the finality of that agreement and stipulation. Accordingly, we deny all relief requested by appellant, and dismiss this


² Because we elect to resolve appellant’s requests on the merits, we direct the clerk of this court to file the proper person documents received on April 16, 2007. See NRAP 42(b).

appeal pursuant to the stipulation. The parties shall bear their own costs and attorney fees. NRAP 42(b).³

It is so ORDERED.⁴

Maupin, C.J.
Maupin

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Michael P. Gibbons, District Judge
Patrick O. King, Settlement Judge
Demetras, O'Neill & Otto
Rollston, Henderson, Rasmussen, Crabb & Johnson
David Von Rodenstein
Douglas County Clerk

³ In denying relief, we express no opinion regarding any remedies either party believes may be available to them at the district court level to enforce the settlement agreement or to bring some other independent legal action related to the underlying dispute. We do remind the parties, however, that in any instance, matters discussed at a settlement conference and papers or documents prepared in furtherance of the settlement conference, excluding settlement conference status reports, are not admissible in evidence in any judicial proceedings and shall not be subject to discovery. See NRAP 16(h).

⁴ On May 11, 2007, appellant's counsel, Mr. David J. Otto, filed a Notice of Withdrawal of Counsel. See SCR 46 (after judgment or final determination, an attorney may withdraw upon the attorney's filing a withdrawal, with or without the client's consent).