

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREEDOM STEEL BUILDING
CORPORATION, A FOREIGN
COMPANY,

Appellant,

vs.

AGT, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Respondent.

No. 49089

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to dismiss a complaint based on a contractual forum-selection clause. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

After a preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e), this court determined that the district court's order might not be substantively appealable and therefore ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant has filed a response to that order, respondent has filed a reply, and appellant filed a reply.¹

Having considered the parties' responses, we conclude that we lack jurisdiction over this appeal. Contrary to appellant's arguments, the district court's order is not appealable under NRAP 3A(b)(2) or NRS 2.090(2) as an order refusing to change "the place of trial." This phrase is

¹We direct the clerk of this court to file the reply received from appellant on July 24, 2007.

limited to orders regarding requests to change the location (venue) of a trial within the state of Nevada.² We are not persuaded by the cases cited by appellant. At least one of the cases cited directly contradicts appellant's position—in F.L. Crane & Sons v. Malouf Construction Corp. the Alabama Supreme Court reiterated a prior holding that a mandamus petition is “the proper method for obtaining review of an order denying a motion to dismiss seeking the enforcement of an outbound forum-selection clause.”³ Many of the other cases cited by appellant did not involve appeals from non-final orders like the one at issue here,⁴ did not address

²See O'Donnell v. Perry, 100 Nev. 356, 683 P.2d 12 (1984) (indicating that changing the “place of trial” refers to a change of venue but not a change of the judge or the court); see also NRS 13.050(3) (providing that “[w]hen the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed” unless otherwise ordered by the court or agreed to by the parties).

³953 So. 2d 366, 372 (Ala. 2006).

⁴These cases involved appeals from final orders or from interlocutory orders involving arbitration that are appealable under the Uniform Arbitration Act or involved original writ petitions challenging an interlocutory order. E.g., Bodzai v. Arctic Fjord, Inc., 990 P.2d 616 (Alaska 1999) (appeal from order dismissing complaint based on forum-selection clause); Bennett v. Appaloosa Horse Club, 35 P.3d 426 (Ariz. Ct. App. 2001) (same); Bancomer, S.A. v. Superior Court, 52 Cal. Rptr.2d 435 (Ct. App. 1996) (petition for writ of mandamus); Edge Telecom, Inc. v. Sterling Bank, 143 P.3d 1155 (Colo. Ct. App. 2006) (appeal from order dismissing complaint based on forum-selection clause); Kentucky Farm Bureau Mut. Ins. v. Henshaw, 95 S.W.3d 866 (Ky. 2003) (same); Turcheck v. Amerifund Financial, Inc., 725 N.W.2d 684 (Mich. Ct. App. 2006) (same); Whelan Sec. Co., Inc. v. Allen, 26 S.W.3d 592 (Mo. Ct. App. 2000) (same); Black v. Arizala, 95 P.3d 1109 (Or. 2004) (same); Southern Guard Rail Co., Inc. v. Holloway Const. Co., No. 02A01-9104-CH-00104, 1992 WL 208173 (Tenn.

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the basis for the court's jurisdiction,⁵ or involved jurisdictional statutes or rules that are not similar to the statutes and rules governing this court's jurisdiction.⁶ And although the Florida cases cited by appellant allowed

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Ct. App. Aug. 31, 1992) (unpublished decision) (same); Allstate v. Stinebaugh, 824 A.2d 87 (Md. 2003) (appeal from judgment); Haakinson & Beaty Co. v. Inland Ins. Co., 344 N.W.2d 454 (Neb. 1984) (same); Doctor's Associates, Inc. v. Keating, 805 A.2d 120, 122 (Conn. App. Ct. 2002) ("The defendants appeal from the orders directing them to proceed with arbitration."); Tupelo Auto Sales, Ltd. v. Scott, 844 So. 2d 1167 (Miss. 2003) (appeal from order denying motion to compel arbitration).

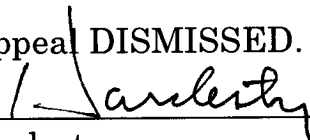
⁵E.g., SR Business Services, Inc. v. Bryant, 600 S.E.2d 610 (Ga. Ct. App. 2004); Colt International Trading Corp. v. Medafrica Lines, 474 N.Y.S.2d 759 (App. Div. 1984); Best Buy Co., Inc. v. Smith & Alster, Inc., No. C5-98-1440, 1998 WL 901761 (Minn. Ct. App. Dec. 29, 1998) (unpublished decision); State ex rel. Polaris Indus. v. District Ct., 695 P.2d 471 (Mont. 1985).

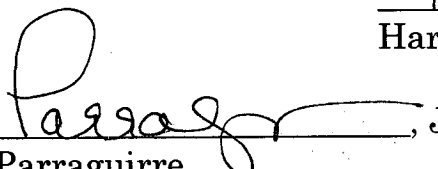
⁶E.g., Capps v. NW Sign Industries, 627 S.E.2d 614 (N.C. 2006) (approving dissenting opinion in court of appeals decision that interlocutory order denying motion to dismiss based on forum-selection clause is immediately appealable under statute permitting appeal from interlocutory order that affects a substantial right); Fisk v. Royal Caribbean Cruises, Ltd., 108 P.3d 990, 992 (Idaho 2005) (motion for permissive appeal granted under Idaho court rule); Prolink, Inc. v. The Ade Group, Inc., No. 79A02-0602-CV-137, 2006 WL 3525364, *1 (Ind. Ct. App. Dec. 8, 2006) (unpublished order) (trial court certified denial of motion to dismiss for interlocutory appeal and appellate court accepted jurisdiction); Wachter Management Co. v. Dexter & Chaney, 144 P.3d 747, 749 (Kan. 2006) (interlocutory appeal brought under statute); Pitts, Inc. v. Ark-La Resources, L.P., 717 So. 2d 268 (La. Ct. App. 1998); Jacobson v. Mailboxes Etc. U.S.A., Inc., 646 N.E.2d 741, 743 & n.4 (Mass. 1995) (order denying motion to dismiss based on forum-selection clause reviewed under procedure allowing appellate court to transfer case after trial judge reports a decision to appellate court for consideration); Luz v. HNTB

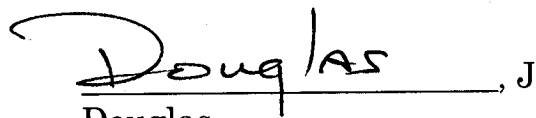
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for an appeal from an order like the one at issue in this case,⁷ we similarly are not persuaded by those cases as they included little reasoning to support the court's jurisdiction and the Florida jurisdictional provision is not the same as the Nevada provisions. Because the district court's order is not appealable under NRAP 3A(b)(2) or NRS 2.090(2) and appellant has not demonstrated that another court rule or statute provides for an appeal, we conclude that this court lacks jurisdiction over this appeal. We therefore

ORDER this appeal DISMISSED.


Hardesty, J.


Parraguirre, J.


Douglas, J.

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Corp., No. 263916, 2006 WL 3734669, *1 (Mich. Ct. App. Dec. 19, 2006) (unpublished order) (appeal of interlocutory order allowed by leave of court); Prows v. Pinpoint Retail Systems, Inc., 868 P.2d 809, 809 (Utah 1993) (granting petition for permission to appeal from interlocutory order); Chase Commercial Corp. v. Barton, 571 A.2d 682, 684 (Vt. 1990) (granting motion for permission to appeal from interlocutory order); Keystone Masonry, Inc. v. Garco Const., 147 P.3d 610, 612 (Wash. Ct. App. 2006) (granting motion for discretionary review of interlocutory order); Pietroske, Inc. v. Globalcom, Inc., 685 N.W.2d 884, 887 (Wis. Ct. App. 2004) (granting petition for leave to appeal under statute from order denying motion to enforce forum-selection clause because appeal would materially advance the litigation's termination).

⁷E.g., Management Computer v. Perry Const., 743 So.2d 627, 630 (Fla. Dist. Ct. App. 1999); Regal Kitchens, Inc. v. O'Connor & Taylor Condominium, 894 So. 2d 288 (Fla. Dist. Ct. App. 2005); Ware Else, Inc. v. Ofstein, 856 So. 2d 1079 (Fla. Dist. Ct. App. 2003).

cc: Hon. Sally L. Loehrer, District Judge
Stephen E. Haberfeld, Settlement Judge
Larson & Stephens
Polenberg Cooper PA
Bogges & Harker
Eighth District Court Clerk