

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALYSON ROTH AND JENNIFER E.  
STAPLETON,  
Appellants,

vs.

BAYERISCHE MOTOREN WERKE  
AKTIENGESELLSCHAFT; AND BMW OF  
NORTH AMERICA, INC.,

Respondents.

No. 49205

**FILED**

NOV 19 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Anderson*  
DEPUTY CLERK

ALYSON ROTH,  
Appellant,

vs.

BAYERISCHE MOTOREN WERKE  
AKTIENGESELLSCHAFT; AND BMW OF  
NORTH AMERICA, INC.,

Respondents.

No. 49982

ORDER DISMISSING APPEALS

These are appeals from a judgment on a jury verdict (Docket No. 49205) and a post-judgment order awarding costs to respondents (Docket No. 49982). Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Alyson Roth has filed motions, one of which appellant Jennifer E. Stapleton has joined, requesting this court to determine whether it has jurisdiction over these appeals. Roth explains that after she filed the notices of appeal, the district court entered an order granting a new trial, from which respondents have appealed.<sup>1</sup> Thus, according to Roth, it appears that appellants are no longer aggrieved by

<sup>1</sup>See Docket No. 50262; Docket No. 52496. See also NRAP 3A(b)(2).

the judgment and the post-judgment order and therefore lack standing under NRAP 3A(a) to appeal. Respondents submitted responses, agreeing both that appellants are no longer aggrieved and that this court consequently lacks jurisdiction over the appeals.<sup>2</sup>

Under NRAP 3A(a), only aggrieved parties may appeal. A party is aggrieved when a judgment adversely and substantially affects either a personal right or a property right.<sup>3</sup> Further, this court has consistently adhered to the proposition that it has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.<sup>4</sup> Under NRAP 3A(b)(1), a judgment is appealable only when it finally resolves the matter before the district court.<sup>5</sup> NRAP 3A(b)(2) permits appeals from special orders after final judgment, such as orders awarding costs.<sup>6</sup>

Having reviewed Roth's motions, respondents' responses, and the documents submitted to this court pursuant to NRAP 3(e), we agree

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<sup>2</sup>We approve the parties' stipulation, filed on October 20, 2008, to extend the time to respond to Roth's motion to determine jurisdiction. See NRAP 26(d). The clerk of this court shall file the responses, provisionally received in this court on November 3, 2008, in each docket.

<sup>3</sup>Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

<sup>4</sup>Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

<sup>5</sup>Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

<sup>6</sup>Id.

with the parties that because the district court granted appellants' motion for a new trial, we lack jurisdiction over these appeals.<sup>7</sup>

Docket No. 49205

In Docket No. 49205, Roth and Stapleton have appealed from the district court's judgment on the jury verdict. In her motion, Roth seeks a determination of this court's jurisdiction over that judgment, given the new trial order, to protect her appeal rights. Roth notes that other jurisdictions have allowed such appeals to proceed, in case the new trial order is reversed and the judgment is reinstated, and Stapleton points to decisional law in California<sup>8</sup> and Oregon<sup>9</sup> so concluding.

As early as 1902, this court has recognized that "[i]f a new trial is granted, the former decision is set aside, and the party whose motion has prevailed is not 'aggrieved,' and has no ground for an appeal."<sup>10</sup> We recently reaffirmed the proposition that an order granting a new trial renders ineffective the underlying judgment.<sup>11</sup> Other courts have likewise concluded that parties who have been granted a new trial have no basis on which to appeal the underlying judgment. For example,

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<sup>7</sup>See NRAP 3A(a) (explaining that an aggrieved party may appeal).

<sup>8</sup>Spencer v. Nelson, 180 P.2d 886 (Cal. 1947).

<sup>9</sup>Frank v. Matthiesen, 240 P. 551 (Or. 1925).

<sup>10</sup>Reno Mill Co. v. Westerfield, 26 Nev. 332, 345-46, 69 P. 899, 899-900 (1902) (quoting with approval Kauffman v. Maier, 29 P. 481 (Cal. 1892)).

<sup>11</sup>See Reno Hilton Resort Corp. v. Verderber, 121 Nev. 1, 6 n.24, 106 P.3d 134, 137 n.24 (2005) (stating that if a new trial is granted, the underlying judgment is vacated).

the Supreme Court of Arizona, in Nielson v. Patterson,<sup>12</sup> held that a trial court order granting a new trial vacates, rather than suspends, the underlying judgment, and since a vacated judgment lacks any force or effect, the order granting a new trial places the parties in the positions that they occupied before the vacated judgment was entered.<sup>13</sup> Thus, after concluding that nothing remained of the underlying judgment to challenge on appeal, the Nielson court determined that an appeal was unnecessary to preserve the ability to later challenge the underlying judgment in the event that the order granting the new trial was overturned on appeal.<sup>14</sup> Similarly, we conclude that, in light of the district court order granting a new trial, the underlying judgment is of no effect and appellants are not aggrieved.

Docket No. 49982

Docket No. 49982 is an appeal from a post-judgment order awarding costs to respondents. As this order was based on the vacated judgment, it appears that it, too, is of no effect and, thus, that Roth is not aggrieved. In any case, as no final written judgment currently exists, the

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<sup>12</sup>65 P.3d 911 (Ariz. 2003).

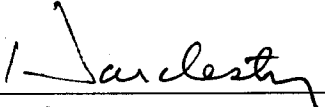
<sup>13</sup>Id. at 914; see also Trinity Lutheran Church v. Lipps, 68 S.W.3d 552, 556 (Mo. Ct. App. 2001) (stating that a trial court order granting a motion for a new trial “erased” the original judgment, such that the party that had sought the new trial was no longer aggrieved and thus lacked standing to appeal).

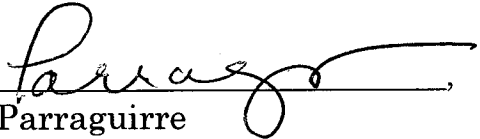
<sup>14</sup>Nielson, 65 P.3d at 914-15 (rejecting California and Oregon’s approach, explaining that neither approach “assures economy of effort,” and recognizing that requiring a party to appeal before the vacated judgment is reinstated potentially wastes not only judicial resources, but also attorney and litigant resources).


“post-judgment” order is not independently appealable under NRAP 3A(b)(2) as a special order made after final judgment.

For the reasons noted above, we conclude that we lack jurisdiction over these appeals. Should the new trial order be reversed and the judgment and order awarding costs be reinstated, appellants may then appeal from those orders. Accordingly, we

ORDER these appeals DISMISSED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Ara H. Shirinian, Settlement Judge  
Mainor Eglet Cottle, LLP  
Lewis & Roca, LLP/Las Vegas  
Dennett Winspear, LLP  
Bowman and Brooke LLP  
Law Offices of Greg W. Marsh, Chtd.  
Eighth District Court Clerk