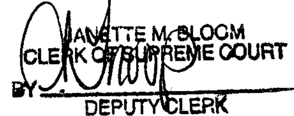
IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH SLETTEN,
Appellant,
vs.
LOUIS G. NAVELLIER AND NAVELLIER SERIES FUND,
Respondents.

No. 49459



ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to reconsider an order denying a motion to enforce liability on an appeal bond. Second Judicial District Court, Washoe County; Robert H. Perry, 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] Accordingly, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

[1]See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (explaining that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); NRAP 3A(b) (listing appealable orders); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (holding that an order denying rehearing is not appealable as a special order after final judgment under NRAP 3A(b)(2)).

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In response, appellant argues that "in practical effect," the district court granted the motion for reconsideration by setting the motion for a hearing and therefore the court's subsequent order became the final judgment in this case and is appealable under NRAP 3A(b)(1). As support, appellant relies on this court's decision in Gunlord Corp. v. Bozzano.[2] Respondents have filed a reply, arguing that the district court did not grant the motion for reconsideration and therefore Gunlord is inapposite. We agree with respondents.

This court has repeatedly held that an order denying a motion for rehearing or reconsideration is not itself an appealable order.[3] In contrast, this court has held that an order granting a motion for rehearing or reconsideration is appealable under NRAP 3A(b)(2) as a special order made after final judgment, because it alters or affects the rights or liabilities of a party arising out of the final judgment.[4] Additionally, this court held in Gunlord that when the district court grants rehearing or reconsideration, the judgment entered after rehearing or reconsideration becomes the final judgment for purposes of NRAP 3A(b)(1).[5]

This case is distinguishable from Gunlord because the district court did not grant the motion for reconsideration. In Gunlord, the district

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[2]95 Nev. 243, 591 P.2d 1149 (1979).

[3]Arnold v. Kipp, 123 Nev. ___, ___ P.3d ___ (Adv. Op. No. 41, October 11, 2007); Alvis, 99 Nev. at 186, 660 P.2d at 981.

[4]Bates v. Nevada Savings & Loan Ass'n, 85 Nev. 441, 443, 456 P.2d 450, 452 (1969); Gunlord, 95 Nev. at 244 n.1, 591 P.2d at 1150 n.1.

[5]95 Nev. at 244-45, 591 P.2d at 1150.

court entered an order granting a motion for rehearing and then held an adversary hearing on a motion for summary judgment that it had previously granted as unopposed. After the hearing, the court again determined that summary judgment was proper and entered an appropriate judgment. The losing party then appealed from the judgment entered after rehearing.[6] Here, the district court did not grant the motion for reconsideration; rather, the district court decided to set the motion for a hearing. After hearing argument on the motion for reconsideration, the district court entered an order denying the motion. That order addresses the standards for granting reconsideration and concludes that appellant had not demonstrated that reconsideration was warranted. It is that order that appellant has appealed. And as explained above, that order is not appealable.

Appellant suggests that this case involves "special circumstances" because appellant filed a timely request for reconsideration and the district court "indicated that it intended to hold a hearing on that request." Appellant argues that given these "special circumstances," requiring him to file a notice of appeal before the district court ruled on the motion for reconsideration "would have deprived the trial court of the opportunity to correct an error" and creates a "trap for litigants by encouraging them to file unnecessary appeals." We disagree. This court has long held that an order denying a motion for reconsideration is not appealable and that a motion for reconsideration

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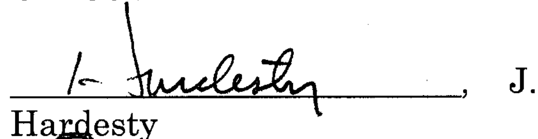
[6] Id.

does not toll the time to appeal.[7] The fact that appellant had the same choice to make as any other litigant who files a motion for rehearing or reconsideration—file a timely notice of appeal or take his chances on the motion for reconsideration—does not make the order denying the motion appealable or create a trap.[8]

Having considered appellant's response to the order to show cause and respondents' reply, we conclude that we lack jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.



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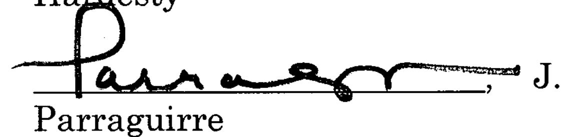

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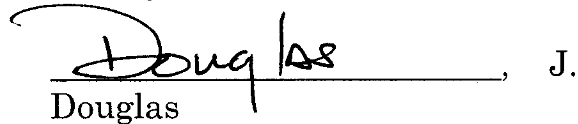

_______________________, J.
Douglas

cc: Hon. Robert H. Perry, District Judge
Lester H. Berkson, Settlement Judge
Hale Lane Peek Dennison & Howard/Reno
Preston, Gates & Ellis
Gayle A. Kern
Washoe District Court Clerk

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[7]Alvis, 99 Nev. at 186, 660 P.2d at 981.

[8]We note that if appellant had filed a notice of appeal and the district court then indicated an intent to grant the motion for reconsideration, this court has adopted a procedure for dealing with that situation whereby the case can be remanded to the district court. See Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).