

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAVED BY GRACE LUTHERAN  
CHURCH OF PAHRUMP, NEVADA, A  
NON-PROFIT NEVADA CORPORATION,  
Appellant,  
vs.  
ALFRED GERSTLER TRUST,  
Respondent.

No. 51008

**FILED**

**JUL 31 2009**

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order, certified as final under NRCP 54(b), granting summary judgment in a real property action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

This case concerns a restrictive condition that respondent Alfred Gerstler Trust included in a deed transferring a parcel of real property to Theophilus Ministries. Theophilus eventually transferred a subdivided portion of the property to appellant Saved by Grace Lutheran Church of Pahrump, Nevada, by way of a deed that did not contain a similar restrictive condition.

When Saved by Grace applied for a construction loan to develop the property, its loan application was denied based on the restrictive condition in the deed transferring the property from the Trust to Theophilus. Consequently, Saved by Grace instituted the underlying district court action against the Trust; Theophilus; Ronald Dennis, Theophilus's president; and Lawyers Title Insurance Corporation and Lawyers Title of Nevada, Inc., the title insurance company and its subsidiary, respectively, that issued a title insurance policy pertaining to Theophilus's transfer of the property to Saved by Grace. Saved by Grace's claims against these entities substantially pertained to the restrictive

condition in the Trust's deed to Theophilus. In particular, Saved by Grace's claims against the Trust concerned the validity of the restrictive condition in the Trust's deed, under NRS 111.237(2), which generally prohibits provisions in deeds that restrict the use of property based on, among other things, the acquirer's religion.

Ultimately, the district court granted summary judgment to the Trust on Saved by Grace's claims against it, concluding that the restriction in the Trust's deed did not violate NRS 111.237(2). The district court subsequently certified its summary judgment to the Trust as final under NRCP 54(b). This appeal by Save by Grace followed.

When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a jurisdictional defect—the district court's NRCP 54(b) certification of the challenged order appeared improper—we directed Saved by Grace to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, although the district court's summary judgment order completely removed the Trust from the district court action, see NRCP 54(b); Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990) (noting that NRCP 54(b) contemplates certification of an order that completely removes a party), the claims asserted in the action appeared to be so closely related that this court must necessarily decide important issues pending below in order to decide the issues appealed. See Mallin, 106 Nev. 606, 797 P.2d 978; Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986). Saved by Grace timely responded to our show cause order, and the Trust has filed a reply, as permitted.

This court generally adheres to the proposition that no right to appeal exists unless authorized by statute or court rule. Taylor Constr.

Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). NRAP 3A(b)(1) authorizes an appeal from a district court's final written judgment adjudicating all the rights and liabilities of all the parties. Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979). In addition, an appeal may be taken from a written judgment that completely removes a party from the action, if the court finds that there is no just reason for delay and properly directs entry of final judgment under NRCP 54(b). See Mallin, 106 Nev. at 610, 797 P.2d at 981. This court has an independent duty to consider the propriety of a district court's NRCP 54(b) certification as "such certifications implicate the scope of [this court's] appellate jurisdiction. See Ebrahimi v. City of Huntsville Bd. of Educ., 114 F.3d 162, 165 (11th Cir. 1997) (discussing appellate review of orders certified as final under FRCP 54(b), the federal counterpart to NRCP 54(b)); see also Marseilles Hydro Power v. Marseilles Land & Water, 518 F.3d 459, 463-64 (7th Cir. 2008).

With respect to determining whether there is any just reason for delay under NRCP 54(b), we noted in Mallin v. Farmers Insurance Exchange that the district court should consider whether the prejudice resulting to the appellant and the eliminated party from being forced to wait to appeal is greater than any prejudice to the parties remaining below. Id. at 611, 797 P.2d at 981. In deciding whether the parties remaining below would suffer prejudice, it must be considered whether, in resolving the appeal, this court would be setting the law of the case for any issues pending below. See id.; Hallicrafters Co. v. Moore, 102 Nev. 526, 528, 728 P.2d 441, 442-43 (1986). That is, when our resolution of issues

raised on appeal from an NRCP 54(b) certified order would necessarily resolve issues pending in the district court, so that the parties remaining below have no opportunity to fully litigate the issues being decided on appeal, the prejudice to the parties below may outweigh any delay to the appellant and eliminated party. See Mallin, 106 Nev. at 611, 797 P.2d at 981.


Here, according to appellant, the prejudice to the Trust from being forced to wait for a final judgment before bringing an appeal outweighs any affect that this court's resolution of this appeal will have on the case below and outweighs the prejudice to the parties remaining in the district court. But the Trust asserts in its reply that it perceives no prejudice to itself should this court determine that the order is not appealable.

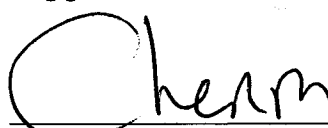
Further, contrary to Saved by Grace's contention, based on the documents currently before us, it appears that we must necessarily decide important issues pending below to decide the issues appealed. Specifically, the district court's conclusion that the Trust's restrictive condition does not violate NRS 111.237(3) directly relates to Saved by Grace's allegations and the pending claims raised in its complaint against the remaining parties. Indeed, Theophilus and Dennis, who are not parties to this appeal, joined Saved By Grace's countermotion for summary judgment, and in its response to our show cause order, Saved by Grace acknowledges that if it is successful on appeal and this court reverses the district court's conclusion, instead determining that the condition is voidable as invalid under NRS 111.237(3), its claims pending below may be rendered moot. Therefore, our disposition of this appeal could, as Saved by Grace's acknowledgment indicates, in essence finally

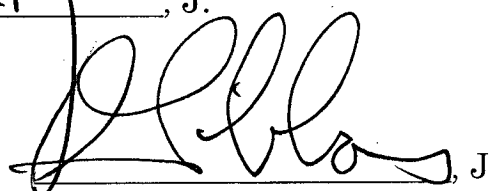
resolve the issues in the case pending below, without the remaining parties having an opportunity to fully litigate those issues.

Because our consideration of this appeal could finally resolve an issue pertinent to the claims pending below without any opportunity for the affected parties to be heard, the prejudice to them from certifying the summary judgment as final must outweigh any prejudice to Saved by Grace or the Trust from having to wait to appeal. We thus conclude that the district court inappropriately determined that no just reason for delay existed and improperly certified as final its summary judgment. Accordingly, we

ORDER this appeal DISMISSED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elissa F. Cadish, District Judge  
M. Nelson Segel, Settlement Judge  
Callister & Reynolds  
Bullivant Houser Bailey  
Kummer Kaempfer Bonner Renshaw & Ferrario/Las Vegas  
Eighth District Court Clerk

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<sup>1</sup>Although not raised by the parties, with respect to the Trust's status in this matter, we note that "a party to litigation is either a natural or an artificial person." Causey v. Carpenters S. Nevada, 95 Nev. 609, 600 P.2d 244 (1979). A trust is neither. Id. Instead, a trust's trustee is the proper party to an action involving a trust. Id.