

IN THE SUPREME COURT OF THE STATE OF NEVADA

GIL GURSANSKY,
Appellant,

vs.

DONNA SCHNEIDER; ERNEST D.
ROARK, III; AND BENSON,
BERTOLDO & BAKER, CHTD.,
Respondents.

No. 51554

FILED

AUG 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

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

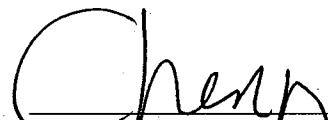
On June 23, 2009, we entered an order to show cause why this appeal should not be dismissed for lack of jurisdiction, because it appeared that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties, Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991), and NRCP 54(b) certification appeared improper. Indeed, the order did not appear amenable to NRCP 54(b) certification because no party had been completely removed from the action. See NRCP 54(b). In particular, the appealed order did not resolve respondents' counterclaims, which appeared to remain pending below.

Appellant's response to the order to show cause was due by July 23, 2009. To date, appellant has failed to file a response. We treat appellant's failure to file a response as an admission that the NRCP 54(b) certification was improper and that we lack jurisdiction over this appeal,

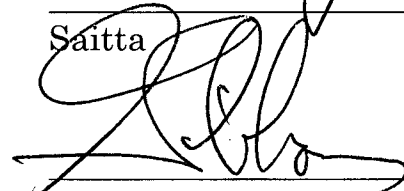
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as it is premature. The NRCP 54(b) certification was improper because no party has been completely removed from the action and claims remain pending below. Under NRAP 4(a)(6), we may dismiss an appeal as premature when the notice of appeal is filed before a final written judgment resolving all the claims in the underlying case is entered. Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Janet Trost, Settlement Judge
Stanley W. Pierce
Benson, Bertoldo, Baker & Carter, Chtd./Las Vegas
Eighth District Court Clerk