

IN THE SUPREME COURT OF THE STATE OF NEVADA

CATHERINE REILLY A/K/A MARY
WHALEN, CATHERINE REILLY
SMITH, MARY LAABS, IRENE
FINTAN,
Appellant,
vs.
KRISTIN M. MORRIS,
Respondent.

No. 53106

FILED

MAY 20 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 affirming and modifying a justice court's extended protection order. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the order designated in the notice of appeal was not substantively appealable because it resolved an appeal from a case that arose in the justice court, and the district court has final appellate jurisdiction over cases arising in justice courts. Nev. Const. art. 6, § 6; Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976); Waugh v. Casazza, 85 Nev. 520, 521, 458 P.2d 359, 360 (1969) (noting that "[t]he district court has final appellate jurisdiction in cases arising in the justice's court").

Our show cause order also noted that, in her docketing statement, appellant suggests that the order is appealable under NRAP 3A(b)(2) because in it, the district court extended or modified the justice court's protection order. We explained that, even if the district court's

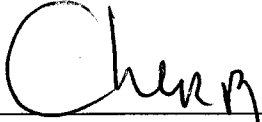
order went beyond resolving the appeal from the justice court order such that its original jurisdiction was exercised, an issue that we did not decide, NRAP 3A(b)(2) allows for appeals from orders granting an injunction; protection orders generally are not appealable under that rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (explaining that, generally, parties may appeal only when authorized by statute or court rule).

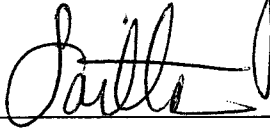
Appellant timely responded to our show cause order, asserting that this court has jurisdiction for three reasons. First, she again asserts that the district court's order is appealable as an injunction under NRAP 3A(b)(2). Next, she argues that, because the district court modified the justice court's order without a hearing, a new action was implicitly commenced in the district court and concluded with the appealed order, giving this court jurisdiction over the "final" order under NRAP 3A(b)(1). Finally, appellant asserts that the appeal was actually a district court "proceeding," the final judgment of which this court has jurisdiction to review under NRAP 3A(b)(1).

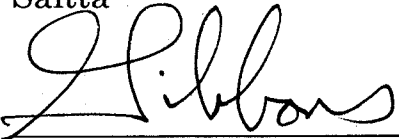
We disagree. Under NRS 200.591(4), the district court has jurisdiction to consider appeals from justice court extended protection orders. That statute provides that, while acting in its appellate capacity, the district court "may affirm, modify or vacate" the appealed extended protection order. See also JCRCP 72A(b)(1) (permitting appeals to the district court from final justice court orders); JCRCP 76A (noting that, in deciding an appeal, the district court may modify the appealed order). Accordingly, regardless of its propriety, the district court's modification was rendered in its appellate capacity, not as part of an implicit new action, and no appeal lies from a district court order rendered in the

appellate capacity, even if that order involves an injunction. Nev. Const. art. 6, § 6; Tripp, 92 Nev. 362, 550 P.2d 419; Waugh, 85 Nev. at 521, 458 P.2d at 360. Further, district court appeals are not “proceedings” for the purposes of NRAP 3A(b)(1). See Nev. Const. art. 6, § 6. As we therefore lack jurisdiction, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Damian R. Sheets
Kristin M. Morris
Eighth District Court Clerk