

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELBERT TINDELL,
Appellant,
vs.
WILLIAM RAPAGLIA,
Respondent.

No. 53157

FILED

JUN 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order in a shareholder's derivative action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

This is appellant Elbert Tindell's second appeal stemming from the underlying case. On August 14, 2008, this court dismissed Tindell's first appeal on the basis that the district court had not entered a final judgment or certified the challenged order as final under to NRCP 54(b). Tindell v. Rapaglia, Docket No. 51781 (Order Dismissing Appeal, August 14, 2008). Thereafter, Tindell sought further relief in the district court, which was denied in an order entered on December 18, 2008, on the basis that a final judgment had, in fact, already been entered. This appeal followed.

Our August order in Docket No. 51781 was the law-of-the-case regarding whether a final judgment had been entered and the district court was thus prohibited from concluding that a final judgment had already been entered in contravention of our pronouncement in Docket No. 51781. See Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) (holding that under the law of the case doctrine, this court's decision governs the same issues in subsequent proceedings upon remand). Indeed, our review of the appellate record indicates that

the district court has still not entered a final judgment in the underlying case.

Specifically, no final judgment has been entered because the district court has not yet entered an order dismissing or otherwise removing Ab Unda Corporation as a defendant in the underlying action. Although respondent William Rapaglia's complaint did not include any claims against Ab Unda, it nonetheless was named as a defendant, was served with process, and appeared in the case, and thus, was a party to the action. Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994). Until Ab Unda is dismissed or otherwise removed from the action, no final judgment has been entered from which an appeal can be taken under NRAP 3A. See Lee v. GNLV Corp., 116 Nev. 424, 427-28, 996 P.2d 416, 418 (2000) (holding that a summary judgment that adjudicated all parties' rights and liabilities and disposed of all issues presented in the case was a final judgment). Accordingly, this court lacks jurisdiction to consider Tindell's appeal from the December 18 order, which the absence of a final judgment renders an interlocutory order, and we therefore

ORDER this appeal DISMISSED.¹

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹We deny, as moot, Rapaglia's June 1, 2010, request for information on the status of this appeal.

cc: Hon. Brent T. Adams, District Judge
Elbert Tindell
Law Offices of Mark Wray
Washoe District Court Clerk