

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY B. CHARLES,
Appellant,
vs.
RUSSELL TSCHANZ,
Respondent.

No. 54504

FILED

MAR 10 2010

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

ORDER DISMISSING APPEAL

This is an appeal from an August 17, 2009, district court order that confirmed a previous award of attorney fees, costs, and interest, and directed respondent to execute and deliver a restrictive covenant. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

When our preliminary review of the limited documentation before this court revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, several of the district court's orders contemplated further action, and consequently, it was unclear whether the district court had entered a final, written, appealable judgment adjudicating all the rights and liabilities of all the parties. See NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000). Appellant timely responded, asserting that although no order of dismissal or judgment has been entered, the matter was finally resolved (either when the district court granted summary judgment or by the August 17 order that, essentially, denied reconsideration of the attorney fees and costs award), and since the parties and the district court are proceeding on that basis, this court should treat the August 17 order as final and appealable. We decline appellant's invitation.

Below, appellant filed a complaint against respondent, asserting a single claim for fraud stemming out of a real estate transaction. According to the district court's April 20, 2009, order, the parties were unable to fully agree to the terms of a settlement, and they filed separate motions for summary judgment, one asking the court to require respondent to sign a restrictive covenant and pay attorney fees, and the other asking the court to enforce a settlement agreement. The court entered findings regarding the underlying dispute, determined that appellant had waived his right to a restrictive covenant, and granted respondent's motion for summary judgment to enforce the parties' settlement agreement, which, the court noted, provided appellant with the relief sought—a restrictive covenant. The April 20 order gave the parties 30 days to provide a stipulation for dismissal with prejudice for the court's review.

An order awarding attorney fees, costs, and interest was entered on July 13, 2009, and amended on July 21, 2009. Then, the court granted appellant's motion for reconsideration, directing respondent to submit a restrictive covenant in open court and nullifying and voiding "the court's previous ruling as to [appellant's] waiver of the restrictive covenant," which apparently amended prior orders, including the April 20 order.¹ At that time, the court indicated that it would review its attorney fees, costs, and interest determination. No appeal was taken from any of those orders. Finally, the court entered the appealed order, dated August 17, 2009, which denied reconsideration of the prior attorney fees, costs,

¹It appears that the copy of the order granting reconsideration reviewed by this court was incorrectly file-stamped with "June 27, 2009," instead of "July 27, 2009."

and interest award, directed respondent to execute and deliver the restrictive covenant within one week, and set a status check for August 31, 2009, indicating that if the covenant had been executed and delivered, it would dismiss the action at that time.

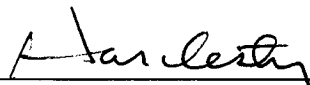
Under NRAP 3A(b)(1), an order is appealable as final when it “disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.” Lee, 116 Nev. at 426, 996 P.2d at 417. When the parties settle an action by agreement, “matters potentially remain for the district court’s consideration,” “[u]ntil a stipulation to dismiss [the] action is signed and filed in the trial court, or until [the] entire case is resolved by some other final, dispositive ruling.” Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 733 (1994) (noting that the district court’s order approving a settlement agreement was interlocutory, since the claims were not dismissed or otherwise finally resolved); cf. NRS 17.115 (explaining that, after a party accepts an offer of judgment, either a judgment must be entered or the case must be dismissed).


Here, the August 17 order is not a final judgment because it merely denies reconsideration of the court’s prior attorney fees, costs, and interest award; it does not finally dispose of any issue before the court.² Further, despite language in the August 17 order indicating that the April 20 order “concluded all legal and factual issues in the case,” neither the April 20 order nor, more importantly, the order amending it dismissed or otherwise finally disposed of all of the issues before the court, since the


²Also, orders denying reconsideration are not substantively appealable. Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

fraud claim remains pending and the orders fail to enter judgment according to the terms of the parties' settlement. See Ginsburg, 110 Nev. at 446, 874 P.2d at 733; St. Louis Union Sta. v. Discovery Ch. Store, 272 S.W.3d 504, 505 (Mo. Ct. App. 2008) (noting that, in Missouri, "[a]n order granting a motion to enforce settlement is not a final, appealable judgment. . . . Instead, it is interlocutory and becomes final only after the trial court has entered a judgment on the settlement and dismissed the underlying petition"). Indeed, the district court's latest order, the August 17 order, contemplates future action, indicating that the court will dismiss the case with prejudice once provided with proof that the "deed" has been executed and delivered to appellant. Accordingly, as no final judgment has been entered, we lack jurisdiction. Appellant may challenge the attorney fees and costs award in the context of any timely filed appeal from the final judgment, once it is entered. Thus, we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Janet Trost, Settlement Judge
Michael R. Mushkin & Associates, P.C.
Woodbury Morris & Brown
Eighth District Court Clerk