

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35232

WILLIAM S. AND CHRISTINE E. KAHN,  
HUSBAND AND WIFE, AND AS TRUSTEES  
OF THE KAHN FAMILY TRUST, DATED  
JUNE 14, 1991; AND FRANK N. KAHN,  
AN INDIVIDUAL,

Appellants,

vs.

ERIC KAHN,

Respondent.

**FILED**

MAR 29 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a post-judgment motion for declaratory relief and denying a request for a contempt sanction. Respondent has moved to dismiss the appeal for lack of jurisdiction.

The litigation stems from a dispute over a family-owned truck-rental business with the parents, William and Christine Kahn (the Kahns), and their son Frank, on one side, and another son, Eric Kahn, on the other side. Without going into the details of the underlying dispute, which is not relevant to the jurisdictional question, Eric sued the Kahns and Frank, alleging breach of contract regarding Eric's services to the business. The parties later agreed to settle the litigation, as part of which Eric agreed to purchase the business. A judgment was entered, and written notice of entry of judgment was served. Neither party appealed from the judgment.

Under the terms of the settlement, escrow would open in five days and close in ninety days. When Eric encountered alleged difficulties with the Kahns in attempting to close escrow, he moved to compel compliance with the judgment, which the district court denied as premature. After additional alleged difficulties with the Kahns, Eric again moved to

compel compliance with the judgment. In response, the Kahns filed a motion entitled "motion for declaratory relief due to [Eric's] anticipatory and other breaches of settlement agreement and for order to show cause re: contempt." The Kahns' motion asked the district court to excuse their performance under the settlement agreement based on Eric's alleged breaches of that agreement. The district court granted Eric's motion and denied the Kahns' motion. The Kahns timely appealed from the order.

Eric has moved to dismiss the appeal for lack of jurisdiction. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). A post-judgment order is generally only appealable if it is a special order after final judgment. See NRAP 3A(b)(2). A special order made after final judgment is one that affects the rights of the parties growing out of the final judgment. See Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957). In other words, a post-judgment order that modifies the judgment would be appealable because the rights growing out of the judgment would be affected. See Burton v. Burton, 99 Nev. 698, 700, 699 P.2d 703, 705 (1983). An order refusing to modify a judgment, by contrast, does not change any rights growing out of the judgment, and such an order is therefore not appealable. See id.

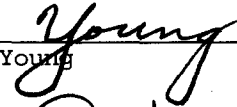
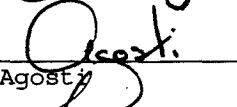
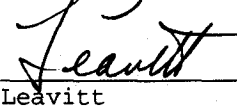
No statute or court rule permits an appeal either from an order denying a motion for declaratory relief or from an order denying a motion for a contempt sanction. See, e.g., NRAP 3A(b). The order denying the motion for declaratory relief and for a contempt finding was not a special order after final judgment, because the order did not affect the rights of the parties growing out of the judgment. In other words, in denying the motion for declaratory relief and for

contempt, the order did not change the rights that the judgment established.

The Kahns argue that the order is appealable under Burton. Burton held that certain post-divorce decree orders denying motions to modify the divorce decree are appealable when "the motion is based upon changed factual or legal circumstances and the moving party is not attacking the original judgment." 99 Nev. at 700, 699 P.2d at 705. As Burton makes quite clear, however, this rule only applies to orders refusing to modify divorce decrees. Id. at 701, 699 P.2d at 705 ("The analysis above is in keeping with this court's practice of reviewing the merits of orders denying motions to modify divorce decrees.").

As we lack jurisdiction over this appeal, we

ORDER the appeal dismissed.<sup>1</sup>

 _____ Young	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Gary L. Redmon, District Judge  
Lamond R. Mills & Associates LLC  
Kenehan Lambertsen & Stein  
Hutchison & Steffen  
Clark County Clerk

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<sup>1</sup>On March 13, 2000, Eric filed a motion for leave to file a reply in support of his motion to dismiss and improperly attached the proposed reply. We remind counsel that proposed filings must be separately tendered to this court. Nevertheless, we grant the motion and direct the clerk of the court to detach and file the proposed reply.