

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENERAL SUPPLY & SERVICES, INC.
D/B/A GEXPRO, A FOREIGN
CORPORATION,

Appellant,

vs.

BURKE & ASSOCIATES, A NEVADA
CORPORATION; AND WESTERN
SURETY COMPANY, A SURETY,

Respondents.

No. 58916 ✓

FILED

MAY 04 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingold*
DEPUTY CLERK

J TILTON INC. D/B/A TSI ELECTRIC;
AND GENERAL SUPPLY & SERVICES,
INC. D/B/A GEXPRO, A FOREIGN
CORPORATION,

Appellants,

vs.

BURKE & ASSOCIATES, A NEVADA
CORPORATION; AND WESTERN
SURETY COMPANY, A SURETY,

Respondents.

No. 59305

J TILTON INC., A NEVADA
CORPORATION D/B/A TSI ELECTRIC;
AND GENERAL SUPPLY & SERVICES,
INC. D/B/A GEXPRO, A FOREIGN
CORPORATION,

Appellants,

vs.

BURKE & ASSOCIATES, A NEVADA
CORPORATION; AND WESTERN
SURETY COMPANY, A SURETY,

Respondents.

No. 59452

ORDER DISMISSING APPEAL IN DOCKET NO. 58916 AND
CONSOLIDATING APPEALS AND REINSTATING BRIEFING IN
DOCKET NOS. 59305 AND 59452

These are related appeals from district court orders in a contract action.

Our preliminary review of the docketing statements and the NRAP 3(g) documents revealed a potential jurisdictional defect.

Specifically, a final judgment did not appear to have been entered in the underlying action because a claim remained pending against Platte River Insurance Company, see NRAP 4(a)(6) (explaining that a premature notice of appeal does not divest the district court of jurisdiction), and the order challenged in Docket No. 58916 did not appear to be substantively appealable. See NRAP 3A(b) (identifying appealable orders); Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (recognizing that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule). Thus, this court issued a show cause order.

In response, appellants assert that, following the entry of the orders challenged on appeal, Platte River Insurance Company was formally dismissed from the action below, thus resolving all claims pending in the district court, and they attached a copy of the order dismissing Platte River Insurance Company to their response. Therefore, a final order has been entered in the underlying action, and Docket Nos. 59305 and 59452, which challenge the final order and a post-judgment order regarding attorney fees and costs, respectively, shall be allowed to proceed. See NRAP 4(a)(6) (providing that, when the notice of appeal is premature but a final judgment is entered before this court dismisses the appeal, this court will consider the notice of appeal as having been filed on the date of and after entry of the final judgment).

Our review of Docket No. 58916 reveals, however, that the order sought to be appealed in that case is not substantively appealable. See NRAP 3A(b) (identifying appealable orders). In particular, the order, which denied appellant's motion to amend the complaint to conform to the evidence at trial, was not a special order entered after final judgment, as it was entered prior to the final judgment and did not affect any rights of a party arising out of the judgment. See Gumm v. Mainor, 118 Nev. 912,

920, 59 P.3d 1220, 1225 (2002) (holding that an appealable special order after a final judgment is one that affects “the rights of some party to the action, growing out of the judgment previously entered”). Thus, we conclude that we lack jurisdiction over the appeal in Docket No. 58916, see Pengilly, 116 Nev. at 649, 5 P.3d at 571, and we dismiss that appeal.¹

Having resolved the jurisdictional issues, we conclude that in the interest of judicial economy, the appeals in Docket Nos. 59305 and 59452 should be consolidated. Accordingly, we consolidate these appeals for all appellate purposes. Additionally, we reinstate the deadlines for preparing transcripts and briefing in these appeals. Court reporter Norma Ramirez shall have 15 days from the date of this order to prepare and deliver the requested transcripts and to file a certificate of delivery in this court. NRAP 9(b). Appellants shall have 90 days from the date of this order to file and serve their opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

¹Nothing in this order precludes appellants from raising arguments regarding the interlocutory order denying the motion to amend in their appeal from the final order in Docket No. 59305. Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (recognizing that an interlocutory order entered prior to a final judgment may be heard by this court on an appeal from the final judgment).

cc: Hon. Susan Johnson, District Judge
Gibbs, Giden, Locher, Turner & Senet LLP
Peel Brimley LLP
Eighth District Court Clerk
Norma Ramirez, Court Reporter