

IN THE SUPREME COURT OF THE STATE OF NEVADA

YVONNE RANDALL, AS THE SPECIAL
ADMINISTRATOR OF THE ESTATE
OF DONALD R. RANDALL,
Appellant,
vs.
STACY D. RANDALL, AN
INDIVIDUAL,
Respondent.

No. 64074

FILED

DEC 08 2014

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting summary judgment in a tort and contract action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

When our preliminary review of this appeal revealed a potential jurisdictional defect, we directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that a timely motion for reconsideration had not yet been resolved. NRAP 4(a)(4); *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1195 (2010). In response, appellant indicated that an order resolving the motion for reconsideration had been entered, rendering the summary judgment order appealable. In reply, however, respondent argued that regardless of whether the motion for reconsideration had been resolved, three of respondent's counterclaims remained pending below, thus rendering the appeal premature. Respondent argued that the appeal should be dismissed, or in the alternative, the issues limited on appeal. In response, appellant agreed that respondent's counterclaims remained pending and moved for voluntary dismissal so that respondent's counterclaims can be resolved.

Having considered the response, the reply, and the parties' competing motions to dismiss, it appears that respondent's counterclaims for assault and intentional infliction of emotional distress¹ remain pending and that no final judgment has been entered. NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *KDI Sylvan Pools, Inc. v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Accordingly, as the notice of appeal was premature, we lack jurisdiction over this appeal, NRAP 4(a)(6), and we

ORDER this appeal DISMISSED.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

¹To the extent that the parties also note that respondent's counterclaim for attorney fees has not been resolved, a request for attorney fees is not a cause of action and would not preclude an order from being a final judgment. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) ("[A] final judgment is one that 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.").

²To the extent that the parties' competing motions request relief other than dismissal for a premature notice of appeal, the parties' motions are denied.

cc: Hon. Douglas W. Herndon, District Judge
Carolyn Worrell, Settlement Judge
Law Offices of Richard S. Small, Esq.
Cary Colt Payne
Eighth District Court Clerk