

IN THE SUPREME COURT OF THE STATE OF NEVADA

SILVIA MIRTA FONSECA, AN  
INDIVIDUAL,  
  
Appellant,  
  
vs.  
JEFF MISZLAY, AN INDIVIDUAL,  
Respondent.

No. 66218

**FILED**

NOV 17 2015

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 a motion for summary judgment in a negligence action. Eighth Judicial District Court, Clark County; Susan Scann, Judge.

We previously entered orders identifying three potential jurisdictional defects and directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. First, we noted that after the notice of appeal was filed, appellant filed a second amended complaint which appeared to render this appeal moot.<sup>1</sup> *See Las Vegas Network, Inc., v. Shawcross & Assocs.*, 80 Nev. 405, 407, 395 P.2d 520, 521 (1964); *see also e.g., 100 Hudson Tenants Corp. v. Laber*, 470 N.Y.S.2d 1, 1 (App. Div. 1983). Second, it appeared that the order may not be a final judgment appealable under NRAP 3A(b)(1) because it is not certified as final under NRCP 54(b) and it does not appear that any written order resolves the claims against Elizabeth Miszlay or the claim for negligence

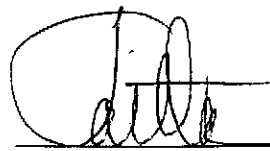
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<sup>1</sup>The second amended complaint was filed after this court entered an order of limited remand pursuant to the district court's certification that it was inclined to grant a motion to amend the complaint. *See Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978).


against Jeff Miszlay. *See Lee v. GNLV, Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). Third, it appeared that because the district court order contemplated that appellant may be permitted to file a second amended complaint, the order may not be final and appealable under NRAP 3A(b). *See, Bergenfield v. BAC Home Loans Servicing, LP*, 131 Nev. Adv. Op. 68, 354 P.3d 1282, 1284 (2015).

Appellant has filed two responses, neither of which addresses these jurisdictional concerns. Because appellant has not identified any district court order that resolves the identified outstanding claims, we conclude that the summary judgment order is interlocutory and not appealable under NRAP 3A(b)(1). Even if the order resolved all pending claims, it would still not be appealable under NRAP 3A(b) where appellant fails to demonstrate, or even argue, that the appeal is not moot or that the district court's order constitutes a final judgment in light of this court's opinion in *Bergenfield*. Accordingly we conclude that we lack jurisdiction over this appeal, and

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Susan Scann, District Judge  
Salvatore C. Gugino, Settlement Judge  
Law Offices of Eric R. Blank  
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.  
Eighth District Court Clerk