

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAYLE HOLDERER,

No. 36738

Appellant,

vs.

FILED

HAMILTON & MCMAHON, LTD.,

OCT 11 2001

Respondent.

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

**ORDER DISMISSING APPEAL AND DIRECTING APPELLANT'S
COUNSEL TO SHOW CAUSE WHY SANCTIONS
SHOULD NOT BE IMPOSED**

This is an appeal from an order granting summary judgment in favor of respondent in a tort suit. When our preliminary review of the documents submitted to this court pursuant to NRAP 3(e), as well as the docketing statement and documents attached thereto, revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

We could not determine from the documents provided whether the district court had entered a final written judgment adjudicating all the rights and liabilities of all the parties.¹ In particular, it appeared from the NRAP 3(e) documents that a third-party complaint had been filed, which was not disclosed by appellant's counsel, as it should have been, in response to docketing statement requests 21, 21(a) and 22. Additionally, it appeared that NRCP 54(b) certification was improper because the claims asserted in the action were so closely related that this court would necessarily decide important issues pending below in order to decide the issues appealed.²

In response to our order, appellant has submitted a copy of an NRCP 41 stipulation of dismissal, filed with the district court clerk on September 15, 1999, which appears to be signed by each of the parties, or their respective counsel, in the underlying lawsuit. The NRCP 41

¹See Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

²See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

stipulation dismisses without prejudice all claims that third-party plaintiff, Hamilton & McMahon, Ltd., had asserted against third-party defendant, Robert H. Perry, Ltd.

In addition, appellant has attached to her response a copy of a December 19, 2000 summary judgment order entered by the district court in favor of Travelers Casualty and Surety Company.³ Appellant Gayle Holderer has filed a separate appeal from the December 19, 2000 order granting summary judgment. That appeal has been assigned Docket No. 37356 before this court.

Having considered appellant's response to our April 17, 2001 order, we conclude that the district court's NRCP 54(b) certification of the order granting summary judgment, in favor of Hamilton & McMahon, Ltd., was improper. Numerous paragraphs in appellant's second amended complaint (e.g. paragraphs 36-39, 41-48, 50-52, 54-60, 62-64, and 72-77) allege that Travelers Property Casualty Corporation is liable based upon the acts or omissions of Brian M. McMahon and/or Hamilton & McMahon, Ltd. Given that appellant's claims against respondent and Travelers are inextricably intertwined, the NRCP 54(b) certification of the summary judgment order was an abuse of the district court's discretion.

Furthermore, the notice of appeal was filed with the district court clerk in this matter on September 11, 2000. As of that date, appellant Holderer still had claims pending against Travelers in the underlying lawsuit. Thus, given that the NRCP 54(b) certification was improper and the district court had not yet entered a final judgment, the September 11, 2000 notice of appeal was premature and of no effect.⁴ We therefore order this appeal dismissed.

We note that appellant may not be prejudiced by dismissal of this appeal, since a preliminary jurisdictional review suggests that this court may have jurisdiction to consider the appeal assigned Docket No. 37356. If so, given that the May 15, 2000 order granting summary judgment in favor of Hamilton & McMahon, Ltd. was an interlocutory


³We note that the business entity is referred to in the caption of the December 19, 2000 order as Travelers Property Casualty Corporation, whereas the body of the order refers to Travelers Casualty and Surety Company.

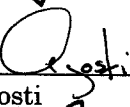
⁴See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).


order, appellant may challenge the propriety of that order within the context of her appeal in Docket No. 37356.⁵

Lastly, counsel for appellant shall show cause why he should not be sanctioned for his failure to provide full and accurate responses to docketing statement requests 21, 21(a) and 22. We note that on January 8, 2001, counsel for appellant signed a verification in which he declared that "the information provided in [the] docketing statement is true and complete." Nevertheless, appellant's counsel failed to attach a copy of the September 15, 1999 stipulation of dismissal to the docketing statement. The stipulation of dismissal was responsive to docketing statement request 22, which directs that "a copy of each disposition" shall be attached to the docketing statement. In addition, appellant's counsel failed to disclose, in response to docketing statement requests 21, 21(a) and 22, that Robert H. Perry, Ltd. was involved in the action before the district court. Accordingly, appellant's counsel shall have twenty (20) days from the date of this order within which to show cause why the imposition of sanctions is not warranted.⁶

It is so ORDERED.⁷


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁵See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (stating that when an appeal is taken from a final judgment, challenges to interlocutory orders entered prior to the final judgment may properly be heard by this court).

⁶See NRAP 14(c); Moran v. Bonneville Square Assocs., 117 Nev. ___, 25 P.3d 898 (2001); KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991).

⁷In her response to this court's April 17, 2001 order to show cause, appellant has requested that we consolidate the appeals in Docket Nos. 36738 and 37356, and that a new briefing schedule issue. We deny appellant's request as moot. Furthermore, we deny as moot respondent's motion to disqualify appellant's attorney in this appeal.

cc: Hon. Brent T. Adams, District Judge
Cecilia L. Rosenauer, Settlement Judge
Robert H. Perry
Piscevich & Fenner
Washoe County Clerk