

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA SMITH; AN INDIVIDUAL,  
Appellant,  
vs.  
WEST LAS VEGAS SURGERY  
CENTER, LLC,  
Respondent.

No. 68383

**FILED**

AUG 17 2016

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

*ORDER AFFIRMING IN PART AND VACATING IN PART*

This is an appeal challenging district court orders entered in a torts action. Eighth Judicial District Court, Clark County; James Bixler, Judge.<sup>1</sup>

As an initial matter, appellant's assertion that the order dismissing the underlying action was a "phantom document," which the district court did not have authority to enter, lacks merit. The record demonstrates that the district court properly dismissed the action at appellant's request in light of appellant's settlement and execution of a release of his claims. *See* NRCPC 41(a)(2) (permitting the district court to dismiss an action by order at the request of the plaintiff). In particular, in a subsequent order declining to find that the dismissal order was ineffective, the district court noted that the case was dismissed on the representation of the parties that they had settled and that appellant had

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<sup>1</sup>The order dismissing the underlying action and a subsequent order permitting respondent to intervene in the case were entered by the Honorable James Bixler, District Judge. Following Judge Bixler's retirement, the case was reassigned to the Honorable Jennifer Togliatti, District Judge, who entered judgment on the complaint in intervention.

executed a release of his claims. And nothing in the record contradicts the district court's conclusion in this regard. Accordingly, we affirm the dismissal of the underlying complaint.

Following the entry of the dismissal order, the district court granted respondent leave to intervene in the underlying case and file a complaint against appellant based on a medical lien. Thereafter, judgment was entered in respondent's favor based on this complaint. In light of the existing dismissal order, we directed respondent to address in its response whether the district court had jurisdiction to allow respondent to intervene in the underlying action after the entry of the order of dismissal. To that end, respondent argues that intervention was permissible because the order of dismissal was not a final judgment, as the district court had reserved jurisdiction over the distribution of settlement funds and the resolution of any liens.


Although the district court purported to retain jurisdiction over these issues, the order of dismissal resolved all of the claims that were pending before the court at that time. As a result, it was a final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining what constitutes a final judgment). Moreover, once the final judgment was entered, the district court did not have jurisdiction to reopen the case, except upon a proper motion filed pursuant to the Nevada Rules of Civil Procedure. *See SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) (concluding that the district court lacked jurisdiction to permit a third party to intervene in an action after the final judgment was entered because "once a final judgment is entered, the district court lacks jurisdiction to reopen it, absent a proper and timely motion under the Nevada Rules of Civil Procedure"); *see also*


*Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993) (“The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.”). Thus, we conclude that the court erred by permitting respondent to file a complaint in intervention and that the orders that resulted from respondent’s intervention are void.

Accordingly, we vacate the order of the district court granting the motion to intervene and all subsequent orders entered in light of the order permitting intervention.<sup>2</sup>

It is so ORDERED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Jennifer P. Togliatti, District Judge  
Joshua Smith  
Gordon & Rees, LLP  
Eighth District Court Clerk

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<sup>2</sup>In light of our resolution of the matter on this basis, we need not reach appellant’s remaining appellate arguments.