

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHANNA KIRKWOOD, AN
INDIVIDUAL,
Appellant,
vs.
PASCUAL ROMERO-FLORES, AN
INDIVIDUAL,
Respondent.

No. 77126-COA

FILED

OCT 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

Johanna Kirkwood appeals from a district court order denying a post-judgment motion for attorney fees and costs in a tort action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Kirkwood sued respondent Pascual Romero-Flores for negligence in connection with an automobile collision. Kirkwood extended an offer of judgment to Romero-Flores under NRCP 68, but he rejected it, and the case proceeded to a jury trial. The jury awarded Kirkwood damages in an amount exceeding her offer of judgment, and the district court entered judgment on the verdict. Kirkwood then moved for attorney fees and costs under NRCP 68. At the hearing on the motion, the district court expressed some concern with Kirkwood's reasoning, and Kirkwood's counsel alluded to authority not presented in the briefing as support. The district court then offered to deny the motion without prejudice so that Kirkwood's counsel could file a renewed motion addressing the uncited authority, which

Kirkwood's counsel accepted. The district court issued a written order denying the motion without prejudice, and the parties submitted additional briefing. However, on the same day she filed her reply in support of her renewed motion, Kirkwood appealed from the district court's order denying her original motion. The district court then declined to rule on the renewed motion pending the outcome of the instant appeal.

On appeal, Kirkwood argues that the district court erroneously concluded that parties represented under contingency fee agreements may never be awarded fees under NRCP 68. Romero-Flores counters that this court lacks jurisdiction, as the order from which Kirkwood appealed was not an appealable order. We agree with Romero-Flores, albeit for a slightly different reason.

A post-judgment order denying a motion for attorney fees is generally appealable. See NRAP 3A(b)(8) (providing that "[a]n appeal may be taken from . . . [a] special order entered after final judgment"). However, a party seeking to appeal from such an order must have standing to do so under NRAP 3A(a), meaning he or she must be "aggrieved by [the order]." A party is so aggrieved "when either a personal right or right of property is adversely and substantially affected by a district court's ruling." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (internal quotation marks omitted). Here, although the district court denied Kirkwood's original motion, it did not reach the merits in doing so and instead allowed her the opportunity to submit a renewed motion. Accordingly, because none of her rights were affected by the district court's

ruling, she was not aggrieved within the meaning of NRAP 3A(a), and thus she lacks standing to pursue this appeal.

Based on the foregoing, we
ORDER this appeal DISMISSED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kenneth C. Cory, District Judge
Law Office of David Sampson
The Firm, P.C.
Robert L. Cardwell & Associates
Eighth District Court Clerk

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.