

IN THE SUPREME COURT OF THE STATE OF NEVADA

DRESSER INDUSTRIES, INC., ROOTS
DIVISION, A DELAWARE CORPORATION,

Appellant,

vs.

NEWMONT GOLD COMPANY, A DELAWARE
CORPORATION,

Respondent.

No. 37328

FILED

JUN 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from two orders of the district court concerning a motion to change venue. Respondent Newmont Gold Company has filed a motion to dismiss the appeal on the ground that the orders are not appealable determinations under NRAP 3A. Because neither order qualifies as an order refusing to change the place of trial, we grant the motion to dismiss.

In July 1998, Newmont sued appellant Dresser Industries for breach of contract and breach of warranty in the Fourth Judicial District in Elko County. In October 2000, Dresser moved to change venue, arguing that it will be unable to obtain an impartial trial in Elko County because Newmont is a prominent employer and corporate philanthropist in the community. At the hearing on the motion, the district court decided to postpone ruling on the motion to change venue until a jury was selected.

Subsequently, on January 17, 2001, the district court entered two written orders. The first order, prepared by Dresser's counsel, states in relevant part that the court "refuses to change the place of trial at this time." The second order, prepared by the court, states that

the court will not deny or grant the Motion for Change of Venue as the court feels that there is every likelihood that it can sit a fair and impartial jury. The court finds, however, that if it cannot sit a fair and impartial jury, venue will

be changed at that time. . . . It is HEREBY ORDERED that the entry of a final decision on the Motion for Change of Venue will be withheld pending the selection of a jury.

On January 19, 2001, Dresser filed a notice of appeal from the first order, and several days later, filed a supplemental notice of appeal from the second order.¹

Pursuant to NRAP 3A(b), an appeal may be taken from an order "changing or refusing to change the place of trial." The issue presented before us is whether the district court's orders refused to change the place of trial for purposes of NRAP 3A. Dresser argues they did: the district court's first order ostensibly refused to change the place of trial, and the court's second order effectively denied the motion by delaying the court's decision until jury selection. In contrast, Newmont maintains that the court's intention in both orders was to defer ruling on the motion to change venue, and therefore neither order is appealable.

We conclude that there is no appealable order before us. The transcript of the district court's hearing on the motion, as well as its second written order, reflect with certainty that the district court deferred ruling on the motion to change venue until voir dire, in an effort to better determine if a fair trial can be obtained in Elko County. Trial courts, as a matter of caution, may defer ruling on a motion to change venue until after voir dire.² That is all the district court did here. In light of the court's holding the motion in abeyance, no order "changing or refusing to

¹According to Dresser, it was unaware of the entry of the second order until January 19, 2001.

²See State v. Lee, 668 So. 2d 420 (La. Ct. App. 1996); see also Slaubaugh v. Slaubaugh, 499 N.W.2d 99 (N.D. 1993) (stating that the usual practice of the district court is to defer ruling on a motion to change venue until or upon completion of voir dire).

change the place of trial" has yet been entered, and we conclude that we lack jurisdiction over this appeal.³ We therefore grant Newmont's motion and

ORDER this appeal DISMISSED.⁴

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. Jack B. Ames, District Judge
Easterly Armstrong & Lambert
Quarles & Brady LLP
Lemons Grundy & Eisenberg
Matthews & Wines
Yates & Leal
Elko County Clerk

³Upon consideration, we deny Dresser's request to construe the appeal as a petition for a writ of mandamus. Even if this appeal were treated as a writ petition, extraordinary relief does not appear warranted. The district court did not fail to perform an act required by law, see NRS 38.160, or arbitrarily or capriciously defer its decision on the motion to change venue. See Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989); Slaubaugh, 499 N.W.2d 99.

⁴Newmont requests that this court award it attorney fees and costs associated with its motion to dismiss because Dresser purportedly misrepresented the district court's orders in its notices of appeal and docketing statement. We deny the request, as sanctions do not appear warranted.