

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
LONNIE TED BINION.

No. 37351

SANDRA MURPHY AND RICHARD
BENNETT TABISH,

Appellants,

vs.

JACK BINION, EXECUTOR OF THE
ESTATE OF LONNIE TED BINION;
AND BONNIE BINION,

Respondents.

FILED

JUL 06 2005

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting partial summary judgment, certified as final under NRCP 54(b). Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

When our preliminary review of the docketing statements and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, we directed appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. It appeared that the NRCP 54(b) certification was improper because the partial summary judgment did not completely remove a separate party or claim for relief.¹ In the three consolidated cases below, the district court entered an order on December 26, 2000, which granted partial summary judgment

¹NRCP 54(b) was amended effective January 1, 2005. The former version of NRCP 54(b) applies to this case, which provided, “[w]hen more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties.”

for the Estate of Lonnie Ted Binion and against appellants Sandra Murphy and Richard Tabish for the wrongful death of Binion and conversion of Binion's coin collection. The district court also entered a judgment in the Estate's favor and against Murphy and Tabish for Binion's funeral expenses, and for the award of exemplary and punitive damages (District Court Case No. A403340). The district court further granted summary judgment to respondent Bonnie Binion on her wrongful death claim against Murphy and Tabish (District Court Case No. A409766).

Finally, the district court stated that, after trial in the case, it would determine the amount of damages to the Estate caused by Murphy's and Tabish's conversion of the coin collection, the amount of exemplary and punitive damages to be imposed against Murphy and Tabish, and the amount of Bonnie's damages resulting from Binion's wrongful death.

Because the district court entered a judgment on liability alone, and had yet to determine the amount of damages, no separate claim was completely removed from the case. Thus, it appeared that NRCP 54(b) certification was improper.²


In response, appellant Tabish agrees that this court lacks jurisdiction because the issue of damages remains pending in the district


²See Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 593 P.2d 1068 (1979). Moreover, we noted that appellants failed to attach to their docketing statements copies of the latest-filed versions of all complaints, counterclaims, and/or cross-claims filed in the district court as required by the docketing statement instructions and NRAP 14. See Moran v. Bonneville Square Assocs., 117 Nev. 525, 25 P.3d 898 (2001). While we decline to impose sanctions in this case, we caution appellants' counsel that failure to provide the required documentation in future cases could constitute grounds for sanctions.

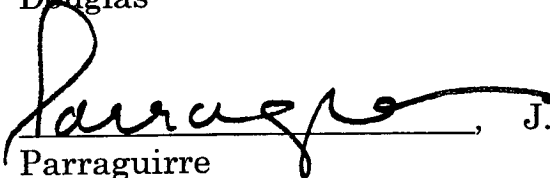
court and the certification of finality under NRCP 54(b) was improper. Appellant Murphy has filed a joinder in Tabish's response.

Accordingly, as we lack jurisdiction over this appeal, we hereby dismiss it. We deny as moot the April 8, 2005 motion to withdraw filed by Tabish's counsel and the May 12, 2005 request concerning a stay of this appeal.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Lansford W. Levitt, Settlement Judge
Law Offices of Michael V. Cristalli, Ltd.
Murdock & Associates, Chtd.
Herbert Sachs
Wright Judd & Winckler
Clark County Clerk