

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL J. DALEY,  
Appellant,  
vs.  
ENCORE GROUP OF  
PROFESSIONALS, LLC; ENCORE  
GROUP OF CALIFORNIA, LLLP;  
ENCORE GROUP OF HAWAII, LLC;  
ENCORE GROUP OF NEVADA, LLC;  
ENCORE GROUP OF TEXAS, LLC;  
JOHN D. & TERRY L. JACKSON  
TRUST; JOHN D. JACKSON; AND  
SYLO MANAGEMENT  
Respondents.

No. 85597

**FILED**

APR 05 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from a district court order granting a renewed motion to enforce a settlement agreement and granting a motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

This court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, no statute or court rule authorizes an appeal from a district court order granting a motion to enforce a settlement agreement. *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (explaining that this court “may

only consider appeals authorized by statute or court rule”); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445-46, 874 P.2d 729, 733-34 (1994) (an order approving a proposed settlement agreement is not independently appealable where the order does not dispose of any claims in the case). And no statute or court rule allows an appeal from an interlocutory order awarding attorney fees and costs. While appellant asserted that the order is appealable as a final judgment under NRAP 3A(b)(1), the order did not appear to finally resolve all the claims, counterclaims, and third-party claims asserted in the district court. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment).

In response, appellant asserts that the challenged order is a final judgment because it (1) is titled as final judgment, (2) grants a motion for entry of a final judgment, (3) states that it is a final judgment, and (4) states that no matters remain for the court’s consideration except attorney fees and costs. Respondents seem to agree that the order is a final judgment.

Although the challenged order clearly indicates that the district court intended to create a final judgment, the order does not finally resolve the claims, counterclaims and third-party claims asserted in the underlying proceedings. *See Valley Bank*, 110 Nev. at 445, 874 P.2d at 733 (“This court determines the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called.”). The order grants the renewed motion to enforce the settlement agreement, enters judgment in favor of respondents, and directs appellant to execute a promissory note in an amount equal to the attorney fees and costs that respondents incurred from the inception of the case until January 12, 2022. It also directs respondents to “supply a Verified Memorandum of Fees and Costs

substantiating the amount of the judgment in accordance with NRS 118.110.” Because the order leaves the amount of the promissory note undetermined, it is not a final judgment appealable under NRAP 3A(b)(1).<sup>1</sup>

Both appellant and respondents assert that the challenged order is appealable as an order granting an injunction because it requires appellant to take affirmative action. See NRAP 3A(b)(3). However, the order merely directs that appellant comply with the terms of the settlement agreement; it does not purport to grant a preliminary injunction, nor does it consider the relevant preliminary injunction factors. See NRS 33.010; *Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 505, 422 P.3d 1238, 1241 (2018). Accordingly, this court declines to construe the order as one denying a preliminary injunction. This court also declines appellant’s invitation to construe the order as one denying a request to lift an earlier-imposed preliminary injunction where the court’s earlier order did not impose a preliminary injunction.<sup>2</sup> As the parties do not demonstrate that this court has jurisdiction, see *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (“[T]he burden rests squarely upon the

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<sup>1</sup>Appellant’s assertion that the district court order dismisses all claims in the underlying matter lacks merit. The order does not expressly dismiss any claims and cannot reasonably be construed to do so where it specifically enters judgment against appellant.

<sup>2</sup>This court has not considered respondents’ argument that the order is appealable as a declaratory judgment as it is not supported by cogent argument. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

The parties make no argument that the portion of the challenged order granting a request for attorney fees and costs is appealable.

shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.”), this court

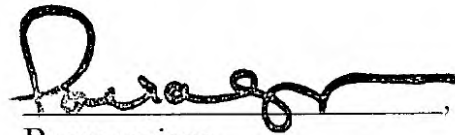
ORDERS this appeal DISMISSED.<sup>3</sup>



\_\_\_\_\_, J.  
Herndon



\_\_\_\_\_, J.  
Lee



\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Veronica Barisich, District Judge  
Patrick N. Chapin, Settlement Judge  
Albright Stoddard Warnick & Albright  
Law Office of Kent P. Woods LLC  
Emerson Law Group  
Eighth District Court Clerk

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<sup>3</sup>Respondents' request to bar appellant from further appeals is denied. Appellant may file a new notice of appeal if the district court enters an appealable order finally establishing the amount of the promissory note.