

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE RHEA RICHARDSON, AN  
INDIVIDUAL; VICKIE RHEA  
RICHARDSON AND JANICE  
GONZALEZ, AS SPECIAL CO-  
ADMINISTRATORS OF THE ESTATE  
OF HOMER DALE RICHARDSON,  
DECEASED,

Appellants,

vs.

ROBERT R. PETERS, DO, AN  
INDIVIDUAL; LEONARDO BUNUEL-  
JORDANA, DO, AN INDIVIDUAL;  
JOSHUA E. JEWELL, M.D., AN  
INDIVIDUAL; ERIK DE JONGHE,  
M.D., M.P.H., AN INDIVIDUAL;  
CARRIE E. BUEHLER, M.D., AN  
INDIVIDUAL; DIGESTIVE HEALTH  
ASSOCIATES, A GENERAL  
PARTNERSHIP; RENOWN HEALTH, A  
DOMESTIC NONPROFIT  
CORPORATION; RENOWN REGIONAL  
MEDICAL CENTER, A DOMESTIC  
NONPROFIT CORPORATION;  
MEDNAX SERVICES, INC., A  
FOREIGN CORPORATION; MEDNAX,  
INC., A FOREIGN CORPORATION;  
PICKERT MEDICAL GROUP, P.C., A  
DOMESTIC PROFESSIONAL  
CORPORATION D/B/A ASSOCIATED  
ANESTHESIOLOGISTS; AND  
HOMETOWN HEALTH PLAN, INC., A  
DOMESTIC NONPROFIT  
CORPORATION,  
Respondents.

No. 88800

FILED

APR 30 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

## *ORDER DISMISSING APPEAL*

This is an appeal from a district court order, certified as final under NRCP 54(b), granting summary judgment on theories of vicarious liability, i.e., ostensible agency, in favor of certain respondents in a professional negligence action. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Upon preliminary review of the documents before this court, this court ordered appellants to show cause as to why this appeal should not be dismissed for lack of jurisdiction. Specifically, this court expressed concern that the district court's NRCP 54(b) certification was improper because it appeared that the pending claims for professional negligence and negligent hiring, training, and supervision were the same claim as, or closely related to, the vicarious liability claims resolved by summary judgment.

In response to the order to show cause, appellants assert the district court's certification was proper "because this appeal will not require a decision on any important issues that remain to be decided at trial, and there is no just reason for delay." Appellants cast "ostensible agency" as a "claim for relief" as that phrase is used in NRCP 54(b) and contend, further, that this "claim" is "sufficiently distinct and separate" from the other claims asserted by appellants below. In reply, the Renown respondents (Dr. Robert Reynold Peters, Dr. Leonardo Bunuel-Jordana, Dr. Joshua E. Jewell, and Renown Health, a domestic nonprofit corporation, Renown Regional Medical Center, a domestic nonprofit corporation, and Hometown Health Plan, Inc., a domestic nonprofit corporation) argue that appellants assert only one claim for relief—professional negligence. Consequently, the Renown respondents contend that the district court's summary judgment

did not resolve any separate claim and, therefore, the certification was improper.

There is no question that the district court's order did not dispose of the case as to a party. "The issue, then, is whether the complaint pleads more than one claim for relief." *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293, 295, 593 P.2d 1068, 1070 (1979).

In the context of Federal Rule of Civil Procedure 54(b), which NRCP 54(b) mirrors, what "constitutes an individual 'claim' is not well defined[.]"<sup>1</sup> *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 574 (9th Cir. 2018). Nevertheless, there are some established contours as to what does or does not constitute a "claim" for the purposes of Rule 54(b).

"The word 'claim' in Rule 54(b) refers to a set of facts giving rise to legal rights in the claimant, not to legal theories of recovery based upon those facts." *CMAX, Inc. v. Drewry Photocolor Corp.*, 295 F.2d 695, 697 (9th Cir. 1961). Further, "it is sufficient to recognize that a complaint asserting only one legal right, even if seeking multiple remedies for the alleged violation of that right, states a single claim for relief." *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 746 n.2 (1976); see also *Ariz. State Carpenters Pension Tr. Fund v. Miller*, 938 F.2d 1038, 1040 (9th Cir. 1991). This court has looked to the factual assertions of a complaint to determine whether it

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<sup>1</sup>This court "consider[s] federal law interpreting the Federal Rules of Civil Procedure, 'because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 589, 356 P.3d 1085, 1089 (2015) (quoting *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)); *Humphries v. Eighth Jud. Dist. Ct.*, 129 Nev. 788, 794 n.1, 312 P.3d 484, 488 n.1 (2013) (indicating that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules").

states multiple claims. *Hallicrafters Co. v. Moore*, 102 Nev. 526, 527-28, 728 P.2d 441, 442 (1986) (“Separate causes of action may frequently state only a single claim for relief for purposes of NRCP 54(b) when they arise out of a single transaction, or a series of related transactions.”).

While appellants’ complaint sets forth five causes of action, a “count” or “cause of action” is not necessarily a claim for the purposes of NRCP 54(b). *Id.* at 527-28, 728 P.2d at 442. Appellants sought to hold the Renown corporate respondents vicariously liable for the alleged professional negligence of all individually named doctors, including Dr. Erik De Jonghe and Dr. Carrie E. Buehler. Appellants argued that Dr. De Jonghe and Dr. Buehler were the ostensible agents of the Renown corporate defendants.

While the district court’s order was certified as final pursuant to NRCP 54(b), 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.” *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). Here, the district court’s summary judgment found that Renown Health, Renown Regional Medical Center, and Hometown Health cannot be held liable through any vicarious liability theory, including ostensible agency, for the alleged professional negligence of respondent Drs. Buehler and De Jonghe. As noted in the certification order, the district court found that “a prompt and speedy appeal will only determine if professional negligence can be imputed to co-defendants and not if professional negligence occurred in the first place.” The court, therefore, disposed of a theory of liability, not a “claim for relief” as that phrase is used in NRCP 54(b). Moreover, even if vicarious liability could be considered a separate claim, the court’s order did not dispose of that claim as it relates to holding Renown Health, Renown Regional Medical Center, and

Hometown Health liable for the conduct of the other individually named doctors (i.e., Dr. Peters, Dr. Bunuel-Jordana, and Dr. Jewell).

While the district court certified its order as final and found there was no just reason for delay, it “does not have the power . . . to transform an interlocutory order which does not come within the rule, into a final judgment.” *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). And although this court in *Taylor Construction* addressed the certification of an order denying summary judgment, the underlying principle is the same. That is, just as an order denying summary judgment is not amenable to certification because it does not dispose of a claim or a party, likewise, an order granting summary judgment as to a theory of liability which does not dispose of a claim or party cannot be said to be a judgment of finality as a matter of law. Further, a finding of no just reason for delay does not cure the fact that the order does not meet the objective requirements of NRCP 54(b).

The NRCP 54(b) certification was improper, and as a result, this court lacks jurisdiction. Accordingly, we

ORDER this appeal DISMISSED.

Pickering, J.  
Pickering

Cadish, J.  
Cadish

Lee, J.  
Lee

cc: Hon. Scott N. Freeman, District Judge  
Jonathan L. Andrews, Settlement Judge  
Christian Morris Trial Attorneys  
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Washoe District Court Clerk