IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRISTON LEE BASS, JR., M.D., Appellant, vs. LYING IN HOSPITAL PARTNERSHIP, A NEVADA PARTNERSHIP, Respondent.	No. 38456
HARRISTON LEE BASS, JR., M.D., Appellant, vs. WOMEN'S HEALTH CARE, INC., A NEVADA CORPORATION; HARRISON H. SHELD, M.D.; AND WILLIAM G. WIXTED, M.D., Respondents.	No. 38606
HARRISTON LEE BASS, JR., M.D., Appellant, vs. WOMEN'S HEALTH CARE, INC., A NEVADA CORPORATION; LYING IN HOSPITAL PARTNERSHIP, A NEVADA PARTNERSHIP; HARRISON H. SHELD, M.D.; AND WILLIAM G. WIXTED, M.D., Respondents.	No. 38918

FILED

MAY 0 8 2003

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

ORDER DISMISSING APPEALS IN DOCKET NOS. 38456 AND 38606, AND ALLOWING APPEAL TO PROCEED IN DOCKET NO. 38918

The appeals in Docket No. 38456, Docket No. 38606, and Docket No. 38918 arise out of the same underlying district court proceeding. Docket No. 38456 is an appeal from a district court order that dismissed respondent Lying in Hospital Partnership. Docket No. 38606 is

03-07912

an appeal from a district court order that dismissed respondents Harrison Sheld, M.D., William Wixted, M.D., and Women's Health Care, Inc. And Docket No. 38918 is an appeal from a district court order that denied appellant's motion to retax costs. On March 22, 2002, this court consolidated the appeals.

On August 1, 2002, we directed appellant to show cause why these appeals should not be dismissed for lack of jurisdiction, because it appeared that appellant's claims against David Brandsness remained pending in the district court and the district court did not certify its orders as final pursuant to NRCP 54(b).[1] Appellant's response failed to establish jurisdiction over these appeals because the claims against Brandsness remained pending.

We entered a second order to show cause on January 16, 2003, noting that appellant could cure the jurisdictional defect by obtaining an order formally resolving the claims against Brandsness, and then filing a timely amended notice of appeal, or obtaining an order from the district court certifying its orders as final under NRCP 54(b).

On March 7, 2003, appellant filed a response to our second order to show cause, asserting that at a March 4, 2003 default hearing, the district court concluded that appellant had not met his burden of establishing a claim against Brandsness, and that the district court would certify this finding as final under NRCP 54(b). On April 2, 2003, appellant

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[1]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

filed a supplement to his response to our order to show cause, which included a district court order filed on March 24, 2003. The March 24, 2003 order concluded that appellant had not proven a claim against Brandsness.

The March 24, 2003 order operated to dismiss appellant's claims against Brandsness, and was thus the final judgment. However, the district court order also purported to certify the order as final pursuant to NRCP 54(b). Appellant indicated that he would not file an amended notice of appeal because of the NRCP 54(b) certification.[2] On April 18, 2003, this court issued a third order to show cause, indicating that the district court's NRCP 54(b) certification was superfluous and ineffective,[3] and appellant must file an amended notice of appeal within the time frame of NRAP 4(a)(1) to perfect these appeals. Appellant filed an amended notice of appeal in these consolidated appeals on April 23, 2003.

Because the March 24, 2003 district court order is the final judgment in this case, the earlier district court orders were interlocutory and not independently appealable.[4] Therefore, the previous notices of appeal were premature.[5] As the appeals were docketed separately in this

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[2]See Knox v. Dick, 99 Nev. 514, 665 P.2d 267 (1983).

[3]See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

[4]NRAP 3A(b).

[5]NRAP 4(a); Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

court, we conclude that the first two appeals should be dismissed, and that the third appeal may proceed, since appellant has obtained what appears to be a final judgment and has filed a timely amended notice of appeal. Thus, we dismiss the appeals in Docket No. 38456, and Docket No. 38606, and allow the appeal from the final judgment to proceed under Docket No. 38918.[6] We note that this court can review the interlocutory orders granting summary judgment and denying appellant's motion to retax costs on appeal from the final judgment.[7]

Accordingly, appellant shall have sixty days from the date of this order within which to file an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Gibbons

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[6]The transcripts filed in these appeals on May 23, 2002, and March 31, 2003, shall be retained pending resolution of the appeal in Docket No. 38918.

[7]See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998).

cc: Bill C. Hammer, Settlement Judge
David Lee Phillips
R. Paul Sorenson
Pico & Mitchell
Mandelbaum Gentile & D'Olio
Schuering Zimmerman & Scully