

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT WHEALON,
Appellant,
vs.
DEAN STERLING AND MARY ELLEN
STERLING,
Respondents.

No. 39003

FILED

AUG 21 2002

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

ORDER DISMISSING APPEAL

This is an appeal from an order granting partial summary judgment in an action for breach of contract and related claims. Appellant Robert Whealon filed the underlying action for breach of contract, constructive fraud, breach of fiduciary duty, and related claims against respondent Dean Sterling. Two of the claims, constructive fraud and breach of fiduciary duty, were also filed against respondent Mary Ellen Sterling. Dean Sterling then filed counterclaims against Whealon for breach of oral contract, breach of fiduciary duty, and related claims. The district court granted the Sterlings' motion for summary judgment on all of the claims asserted in Whealon's complaint, and Whealon filed this appeal.

When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, we ordered Whealon to show cause why his appeal should not be dismissed for lack of jurisdiction. Specifically, it

appeared that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties because Dean Sterling's counterclaims remained pending below.¹ It further appeared that the district court's order was not amenable to NRCP 54(b) certification because no separate claim for relief had been completely removed from the action.²

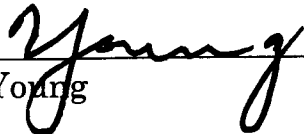
In responding to this court's show cause order, Whealon contends that because the district court's partial summary judgment resolved his entire complaint, a separate claim for relief has been completely removed. Whealon's contention is without merit. NRCP 54(b) certification may be proper when the order completely removes a separate claim for relief. But separate causes of action may state only a single claim for relief when they arise from the same transaction or a series of related transactions.³ Here, Dean Sterling's counterclaims arise from the same set of facts and series of related transactions that led to Whealon's claims. Thus, the district court's order granting summary judgment only on Whealon's claims is not amenable to NRCP 54(b) certification. Moreover, consideration of Whealon's appeal at this time would result in

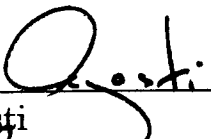
¹Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991).

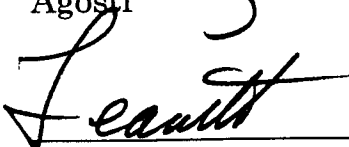
²Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

³Hallicrafters, 102 Nev. at 527-28, 728 P.2d at 442.

piecemeal litigation.⁴ We note that Whealon may challenge the district court's partial summary judgment order on appeal from the final judgment.⁵ Accordingly, as we lack jurisdiction to consider this appeal, we
ORDER this appeal DISMISSED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
M. Nelson Segel, Settlement Judge
DaCorsi Burrows & Placencio, PC
Law Offices of Jason M. Burrows, P.C.
Quirk & Tratos
Clark County Clerk

⁴Id. at 528-29, 728 P.2d at 443.

⁵See NRAP 3A(b)(1); Taylor Constr. Co., 100 Nev. at 209 n.2, 678 P.2d at 1153 n.2.