

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL L. PUERTA, JR., AND  
SHARON L. PUERTA, HUSBAND AND  
WIFE,

Appellants,

vs.

RICHARD C. HUNTSBERGER AND  
LINDA M. HUNTSBERGER, HUSBAND  
AND WIFE,

Respondents.

No. 39246

FILED

OCT 07 2002

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

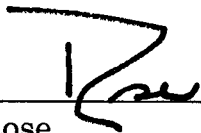
ORDER DISMISSING APPEAL

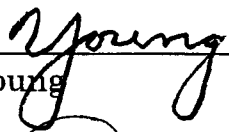
On May 21, 2002, respondents filed a motion to dismiss this appeal. Respondents specifically assert that the “[t]here has been no certification by the district court pursuant to N.R.C.P. Rule 54(b), nor has the court rendered a final judgment in the action as [respondents’] counterclaim is still pending and scheduled for trial.”

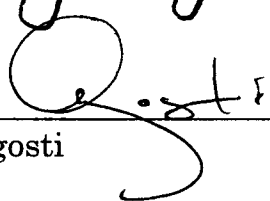
On May 30, 2002, appellants filed an opposition to respondents’ motion. Appellants do not deny that respondents’ counterclaim remains pending before the district court. Rather, appellants state that respondents’ “allegations are dependent and derivative of the determination of the allegations of [appellants’] lawsuit” and “cannot be litigated without conclusions of law being found as to the substance of [appellants’] Complaint.” Appellants further state that “[r]eflecting on the language of the District Court order of January 23, 2002, it can only be concluded that the District Court entered a ‘final judgment’ as to [appellants’] Complaint (under N.R.C.P. Rule 54(b)) and that, accordingly, there was no just reason for delay.”

Having reviewed the record before this court, we conclude that respondents' counterclaim remains pending below. Further, we note that the January 23, 2002, district court order granting summary judgment does not explicitly certify the order as final under NRCP 54(b).<sup>1</sup> Accordingly, we conclude that this appeal was prematurely filed, before the entry of a final written judgment, and is therefore of no effect.<sup>2</sup> Because the premature notice of appeal is ineffective, we conclude we lack jurisdiction to entertain this appeal. Accordingly, we grant respondents' motion and

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. David A. Huff, District Judge  
Arthur J. Bayer Jr.  
Smith & Harmer  
Lyon County Clerk

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<sup>1</sup>See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 593 P.2d 1068 (1979).

<sup>2</sup>See NRAP 4(a)(1); Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).