

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN J. PENNINGTON, AND  
MATTEL, INC., A DELAWARE  
CORPORATION,  
Appellants,  
vs.  
ROBERT STUART,  
Respondent.

No. 39319 FILED

FEB 20 2003

DEPARTMENT OF CLERK  
CLERK OF THE SUPREME COURT  
*J. Richard*

STEVEN J. PENNINGTON, AND  
MATTEL, INC., A DELAWARE  
CORPORATION,  
Appellants,  
vs.  
ROBERT STUART,  
Respondent.

No. 40495

ORDER DISMISSING APPEAL IN NO. 39319, DIRECTING CLERK TO  
TRANSFER DOCUMENTS FROM NO. 39319 TO NO. 40495,  
DIRECTING COUNSEL TO PROVIDE ADDITIONAL  
DOCUMENTATION, AND REINSTATING BRIEFING IN NO. 40495

Both Docket No. 39319 and Docket No. 40495 are appeals from an amended judgment and various post-judgment orders in a personal injury action. Our preliminary review of the docketing statement, attachments, and documents transmitted under NRAP 3(e) revealed a potential jurisdictional defect in Docket No. 39319. In particular, although the district court certified its judgment as final under NRCP 54(b), it appeared that certification may have been improper because the third-party claims still pending below appeared closely connected to the issues on appeal.<sup>1</sup> Consequently, we ordered appellants

<sup>1</sup>See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986); see Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990) (noting that the Hallicrafters standard is part of the analysis when a party is completely eliminated).

to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to our order, appellants explain that they have dismissed their third-party claims and have filed a new notice of appeal. That appeal has been docketed in this court as No. 40495. As we conclude that we lack jurisdiction over the appeal in No. 39319, we dismiss that appeal.<sup>2</sup> Appellants' response includes the notice of appeal docketed as No. 40495, which indicates that a stipulation and order dismissing appellants' third-party complaint against Frehner Construction was entered on May 16, 2002, and that a stipulation and order dismissing appellants' third-party complaint against the State of Nevada, Department of Transportation, was entered on November 5, 2002. The district court documents transmitted to this court under NRAP 3(e), however, do not include a November 5, 2002 order dismissing the third-party complaint against the State of Nevada. Accordingly, appellants shall have twenty days from the date of this order to submit a file-stamped copy of the district court's November 5 order.


As a transcript request form and transcripts were previously filed in Docket No. 39319, we direct the clerk of this court to transfer those documents to No. 40495. Specifically, the clerk shall transfer the transcript request form filed on July 11, 2002, and the transcripts filed on March 11, 2002, August 8, 2002, October 16, 2002, and November 22, 2002. Additionally, we direct the clerk to transfer the docketing statement filed on May 29, 2002, in No. 39319, to No. 40495. Appellants shall have fifteen days from the date of this order to file any supplement to the


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<sup>2</sup>We deny as moot respondent's motion to reinstate the briefing schedule in Docket No. 39319.

docketing statement in No. 40495. Finally, as the parties were unable to reach a settlement in No. 40495, we reinstate briefing in that appeal. Although, in No. 39319, appellants requested that they be given at least ninety days to prepare the opening brief in light of several transcripts not being received until December 2002, we conclude that ninety days is excessive. Instead, appellants shall have sixty days from the date of this order within which to file and serve their opening brief. Briefing shall then proceed under NRAP 31(a)(1).

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Stewart L. Bell, District Judge  
Beckley Singleton, Chtd./Las Vegas  
Goldberg Segalla LLP  
Lynberg & Watkins  
Wieczorek & Associates  
Albert D. Massi, P.C.  
Clark County Clerk