

IN THE SUPREME COURT OF THE STATE OF NEVADA

CELESTE A. GUINN, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF NAWAZ SURANI,

Appellant,

vs.

BERYL Y. DUNCAN, AN INDIVIDUAL;
M. FARMER, AN INDIVIDUAL; LAND
TITLE OF NEVADA, INC., A NEVADA
CORPORATION; AND UNITED
CAPITAL MORTGAGE CORPORATION,
AN ARKANSAS CORPORATION,
Respondents.

No. 39371

FILED

APR 06 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order that denied appellant's NRCP 60(b) motion to set aside (1) the execution sale of appellant's causes of action and (2) stipulations to dismiss those causes of action. When our preliminary review of the docketing statement, the NRAP 3(e) documents and appellant's appendix revealed a potential jurisdictional defect, we ordered appellant, on November 5, 2003, to show cause within thirty days why this appeal should not be dismissed. Specifically, we noted that the denial of an NRCP 60(b) set aside motion is appealable only if the judgment, order, or proceeding sought to be set aside is final.¹ Finality requires an adjudication of all the rights and

¹Pinson v. Triplett, 458 N.E.2d 461 (Ohio Ct. App. 1983) (dismissing for lack of jurisdiction an appeal from the denial of a motion to vacate a default judgment that resolved liability but not damages), cited approvingly in Barry v. Lindner, 119 Nev. ___, 81 P.3d 537, 542-43 n.13 (2003); see also Holiday Inn v. Barnett, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987) (recognizing appellate jurisdiction over the denial of an NRCP 60(b) motion that sought to vacate the final judgment).

liabilities of all the parties.² We observed that the claims against Beryl Duncan for fraud, negligence, “damage to credit reputation,” and declaratory judgment seemed to remain pending below. Further, only a default, but no default judgment, had been entered against AR-AV Nevada, L.L.C. Entry of default does not confer finality with respect to the causes of action pleaded against a defendant.³


When appellant failed to respond to our show cause order, we ordered appellant, on March 3, 2004, to respond to our show cause order within ten days. Appellant filed a response on March 17, 2004, arguing that (1) the order denying NRCP 60(b) relief was final as to the parties who filed the motion and opposed it – appellant Celeste Guinn and respondent United Capital Mortgage Corporation (UCMC); and (2) the district court essentially certified the order as final under NRCP 54(b) by stating that this case “should be looked at closely by the Nevada Supreme Court.” UCMC has filed a reply, pointing out that the claims against Duncan and AR-AV are still pending below, and that the order denying NRCP 60(b) relief was not certified as final.

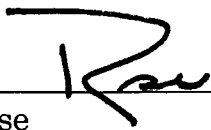
²Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).


³See Looper v. Looper, 277 S.E.2d 78, 79 (N.C. Ct. App. 1981) (stating that “[t]he entry of default by the clerk is not a final judgment and it is not appealable” because “[i]t is an interlocutory act looking toward the subsequent entry of a final judgment by default”); Lee v. Sage Creek Refining Co., Inc., 876 P.2d 997, 998 (Wyo. 1994) (stating that “[a]n entry of default is not a final disposition of the controversy” as “[i]t is simply a clerical act performed by the clerk of court which determines liability but not relief”).

We conclude that this court lacks jurisdiction over this appeal. Claims remain pending below, and even if appropriate, there was no NRCP 54(b) certification.⁴ Accordingly, we

ORDER this appeal DISMISSED.⁵

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Lansford Levitt, Settlement Judge
Kerr & Associates
Leavitt Sully & Rivers
Levine, Garfinkel & Katz
Lionel Sawyer & Collins/Las Vegas
Beryl Y. Duncan
Clark County Clerk

⁴See NRCP 54(b) (requiring an “express” determination that there is no just reason for delay and an “express” direction for the entry of judgment); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991) (concluding that a pending counterclaim defeated appellate jurisdiction and that the judgment was not amenable to NRCP 54(b) certification); Aldabe v. Evans, 83 Nev. 135, 425 P.2d 598 (1967) (dismissing an appeal because the NRCP 54(b) certified judgment lacked an express determination that there was no just reason for delay).

⁵A petition for a writ of mandamus may be an appropriate vehicle for seeking relief from the order refusing to set aside the execution sale and stipulated dismissals.