IN THE SUPREME COURT OF THE STATE OF NEVADA

RENO HILTON RESORT CORPORATION, A NEVADA CORPORATION, D/B/A RENO HILTON,
Appellant,
vs.
DIANE VERDERBER; ROBERT BYINGTON; EUGENE W. HELMS; RUTH P. HELMS; GAYLE HELMS; SALLY SCHTEVIE; YOSSIE SCHTEVIE; AND EDWARD SOLTYS INDIVIDUALLY AND ON BEHALF OF KEN SOLTYS, A MINOR,
Respondents.

No. 39592

FILED

FEB 19 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order entered April 9, 2002, specifying the method of class notice in a class action suit. 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 issued an order to show cause to appellant Reno Hilton Resort Corporation (Reno Hilton), granting it thirty days within which to demonstrate jurisdiction in this court is proper. Having reviewed Reno Hilton's response, as well as the reply filed by respondents, we conclude that we lack jurisdiction over this appeal.

We noted in our order to show cause that it appeared the judgment or order designated in the notice of appeal was not substantively

appealable.[1] Specifically, Reno Hilton characterized the district court's April 9, 2002 order as an order granting affirmative injunctive relief. NRAP 3A(b)(2) authorizes an appeal from an order granting or refusing to grant, or dissolving or refusing to dissolve, an injunction.[2] We noted that it appeared that the class notice provisions of NRCP 23(c)(2) do not qualify as an injunction within the meaning of NRAP 3A(b)(2).

Reno Hilton argues that an order does not have to be labeled an injunction to be appealable as an order granting or denying injunctive relief; rather, appealability is determined by the order's actual effect. Reno Hilton asserts that three provisions of the district court's April 9, 2002 order compel the use of Reno Hilton's customer lists, premises, and internet website, and therefore are "essentially, if not explicitly, injunctive."

Reno Hilton cites Bailey v. Systems Innovation, Inc.,[3] in which the Third Circuit Court of Appeals held that a district court order that prohibited the litigants from making extrajudicial statements was effectively an injunction and appealable under 28 U.S.C. § 1292(a)(1). Section 1292(a)(1) gives federal appellate courts jurisdiction over orders granting or denying injunctions. Reno Hilton also cites a number of

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[1]See NRAP 3A(b).

[2]See Brunzell Constr. v. Harrah's Club, 81 Nev. 414, 404 P.2d 902 (1965) (dismissing appeal from order denying motion for a stay as an unappealable determination, but considering appeal insofar as it concerned the district court's refusal to dissolve an injunction).

[3]852 F.2d 93 (3d. Cir. 1988).

Nevada cases for the proposition that in Nevada, injunctions often compel or restrain the use of customer lists, a party's premises, or internet websites.

Reno Hilton's arguments are unpersuasive. First, despite any similarities between injunctions and the district court's April 9, 2002 order, there is no explicit right to appeal from a district court order specifying the method of class notice in a class action.

Second, Reno Hilton has not established that the district court's April 9, 2002 order is effectively an injunction. Bailey is distinguishable from the case at hand. In Bailey, the respondents requested injunctive relief in their complaint, and the Third Circuit concluded that when the federal district court prohibited extrajudicial speech, it effectively granted the respondents the preliminary injunction they had originally requested. Further, the Third Circuit and other federal appellate courts have held that orders that restrain or direct the conduct of the parties are not appealable under section 1292(a)(1) unless related to the substantive issues involved in the underlying action.[4] Here,

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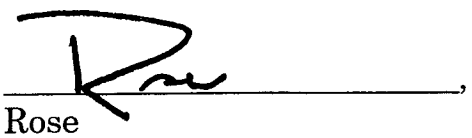
[4]See U.S. v. Santtini, 963 F.2d 585, 591 (3d. Cir. 1992) (holding that a district court order was not appealable under § 1292(a)(1) because the conduct ordered by the court was completely unrelated to the relief sought in the underlying action); State of N.Y. v. United States Metals Refining Co., 771 F.2d 796, 801 (3d. Cir. 1985) (stating that "[o]rders which restrain or direct the conduct of the parties are not appealable under [§] 1292(a)(1) unless the restraint or direction is related to the substantive issues involved"); International Products Corporation v. Koons, 325 F.2d 403, 406 (2d. Cir. 1963) (holding that § 1292(a)(1) does not cover orders restraining or directing conduct unrelated to the substantive issues in the action).

the underlying class action alleges negligence and negligence per se, and the respondents do not seek injunctive relief. The district court's April 9, 2002 order specifying the method of class notice does not relate to the substantive issues involved in the class action.

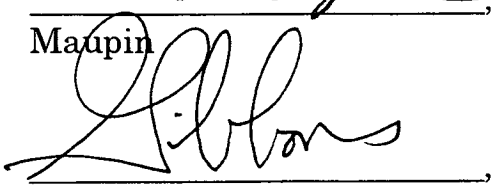
We conclude that the district court's April 9, 2002 order does not constitute an injunction. Accordingly we

ORDER this appeal DISMISSED.[5]



_____, J.
Rose

_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Lionel Sawyer & Collins/Reno
John P. Echeverria
Lyle & Murphy
Washoe District Court Clerk

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[5]We note that Reno Hilton's response to the order to show cause includes a request that its response be construed as a petition for writ relief in the event this court finds jurisdiction lacking in this appeal. Appellant has failed to comply with the procedural requirements for writ petitions. See NRAP 21(a); NRAP 21(d); NRAP 21(e); NRS 34.170; and NRS 34.330. We decline to grant appellant's request.