IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD P. BALDWIN,
Appellant,
vs.
FAR WEST CAPITAL, INC., AND STEAMBOAT DEVELOPMENT CORPORATION,
Respondents.

No. 39985

FILED

DEC 04 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal, originally taken by James Combs and Ronald P. Baldwin, from a July 10, 2002 default judgment in a malicious prosecution and contractual interference case. The default judgment awarded damages against James Combs, Ronald P. Baldwin, Ronald E. Baldwin, and The Geothermal Company. As explained below, we conclude that the district court's entry of an amended default judgment on June 11, 2003, deprived this court of jurisdiction.

In August 2002, respondents filed a "Request for Correction of Clerical Mistake," asking this court to remove from the default judgment the names of defendants Ronald E. Baldwin and The Geothermal Company because they had received a discharge in bankruptcy. While respondents' request was pending, Combs and respondents filed in this court a stipulation to dismiss Combs' appeal, to vacate the default judgment against Combs, and to dismiss respondents' claims against Combs. In January 2003, we deferred ruling on the stipulation until Combs and respondents obtained from the district court a certification

indicating its willingness to grant the requested relief.[1] The district court entered its certification, and we then dismissed Combs' appeal and remanded the matter for further proceedings as to Combs.

In March 2003, this court remanded the remainder of this appeal to allow respondents to pursue with the district court their request to delete the names of Ronald E. Baldwin and The Geothermal Company from the default judgment. On June 11, 2003, the district court entered an amended default judgment, stating that "[t]he action against James Combs has been settled and dismissed previously," and that "[t]he claims against The Geothermal Company and Ronald E. Baldwin have been discharged by an Order for bankruptcy." Consequently, the district court awarded respondents damages against "[t]he only remaining defendant," Ronald P. Baldwin.

When our jurisdictional review showed that entry of the amended default judgment had created a potential jurisdictional defect, we ordered appellant, on September 16, 2003, to show cause why the appeal should not be dismissed for lack of jurisdiction. Specifically, we noted the following points. First, the amended default judgment supercedes the original default judgment,[2] but does not resolve the rights and liabilities of all the parties so as to constitute a final, appealable

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[1]See Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

[2]See Morrell v. Edwards, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982) ("The test for determining whether an appeal is properly taken from an amended judgment rather than the judgment originally entered depends upon whether the amendment disturbed or revised legal rights and obligations which the prior judgment had plainly and properly settled with finality.").

determination.[3] Second, the district court does not appear to have entered an order dismissing respondents' claims against Combs, or Combs' indemnity and contribution cross-claims against the other defendants. Rather, the district court apparently only "certifie[d] its inclination to" dismiss Combs. And although Ronald E. Baldwin and The Geothermal Company were discharged in bankruptcy, there is no indication that the district court entered an order dismissing the claims pleaded against those parties.[4] Finally, respondents' claim for contractual interference appears unresolved as to all defendants.

Purporting to respond to our show cause order, appellant filed a letter in this court on October 30, 2003, enclosing an October 29, 2003 "Second Amended Default Judgment." But appellant does not indicate whether he has complied with our suggestion to cure the jurisdictional defect by filing an amended notice of appeal from any final, appealable determination in this case. Further, on November 3, 2003, appellant filed a formal response to our show cause order, summarily conceding the jurisdictional defect and offering no objection to the appeal's dismissal, "provided that such dismissal is without prejudice with leave to appeal anew, should he so decide."

We conclude that the June 11, 2003 amended default judgment is not a final, appealable determination, as it fails to resolve the rights and liabilities of all the parties. Accordingly, we dismiss this

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[3]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

[4]See KDI Sylvan Pools, 107 Nev. at 342-43, 810 P.2d at 1219 (requiring the formal dismissal of a claim to confer finality).

appeal. Because this court has no power to entertain a jurisdictionally defective appeal,[5] all dismissals for lack of jurisdiction are necessarily with prejudice to further appellate proceedings under this docket number.[6]

It is so ORDERED.

_____, C.J.
Agosti

_____, J.
Rose

_____, J.
Maupin

cc: Hon. Connie J. Steinheimer, District Judge
Cathy Valenta Weise, Settlement Judge
Christopher A. Dias
Paul V. Smith
Burton Bartlett & Glogovac
Washoe District Court Clerk

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[5]See Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

[6]We note that appellant may be able to appeal from any final judgment entered in this case that resolves the rights and liabilities of all parties. Whether the "Second Amended Default Judgment" is a final, appealable determination is unclear.