

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUBAN PROFESSIONAL BUILDING, A
CALIFORNIA LIMITED
PARTNERSHIP,
Appellant,
vs.
JENNI PLAZA PROPERTY, A
CALIFORNIA PARTNERSHIP D/B/A
DUBAN PROFESSIONAL BUILDING,
Respondent.

No. 40174

FILED

APR 22 2003

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

ORDER DISMISSING APPEAL

This is an appeal from a partial summary judgment certified as final under NRCP 54(b) in a real property case. When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why its appeal should not be dismissed. We were concerned that the district court had improvidently certified the partial summary judgment as final. Appellant has filed a response to our show cause order. As explained below, we conclude that this court lacks jurisdiction over this appeal.

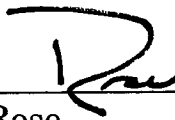
If the claims asserted in an action are so closely related that this court's resolution of certified issues would necessarily resolve claims pending below, then certification is an abuse of the district court's discretion.¹ The claims pleaded in this action all revolve around the ownership of real property at 3160 South Valley View Boulevard. The district court resolved the ownership issue against appellant, eliminating appellant's quiet title claim on summary judgment. Remaining below are respondent's counterclaims and third-party claims for trade name infringement, unfair competition, abuse of process, slander of title, and interference with contract. Any decision concerning the ownership issue

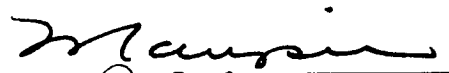
¹See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

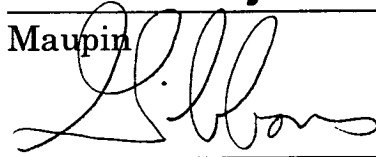
by this court will likely impact remaining counterclaims and third-party claims. For instance, ownership is an essential element to both a quiet title claim and a slander of title claim.² And respondent's abuse of process counterclaim and third-party claim stand or fall on this court's resolution of the ownership issue, given respondent's allegation that appellant sued to "steal" title to the real property. Thus, because appellate review at this stage of the proceedings may create the law of the case for claims still pending below, we conclude that the district court abused its discretion in certifying the partial summary judgment as final.³

Appellant concedes this point, and suggests that appellate jurisdiction exists based on the district court's entry of a permanent injunction one month after appellant filed its September 4, 2002 notice of appeal.⁴ But a notice of appeal filed before the entry of an appealable order or judgment has no effect.⁵

Consequently, as we lack jurisdiction over this appeal, we
ORDER this appeal DISMISSED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

²See NRS 40.010; Higgins v. Higgins, 103 Nev. 443, 744 P.2d 530 (1987).

³See Hallicrafters Co., 102 Nev. at 528, 728 P.2d at 443.

⁴See NRAP 3A(b)(2) (stating that an appeal may be taken from an order granting an injunction).

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

cc: Hon. Mark R. Denton, District Judge
David K. Robinson, Settlement Judge
Hagendorf Law Firm
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk