

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN DAVIDSON, AN INDIVIDUAL,
Appellant,
vs.
KAREN MELLOTT, INDIVIDUALLY,
AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF CARMELLA THERESA PETERS,
Respondent.

No. 40357

FILED

APR 28 2003

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

ORDER DISMISSING APPEAL


This is an appeal from a district court order granting summary judgment. On December 2, 2002, respondent filed a motion to dismiss this appeal. In support of the motion, respondent asserts that this appeal should be dismissed for "lack of an appealable determination" because "all of Respondent's counterclaims are still pending." Appellant has not opposed the motion.


Our review of the docketing statement and documents submitted pursuant to NRAP 3(e) reveals that the following counterclaims remain pending in the district court: conversion, waste, breach of contract, unjust enrichment, and possession. In spite of the pending counterclaims, appellant indicates in the docketing statement that this appeal is appealable under NRAP 3A(b)(1) and (3). We note that NRAP 3A(b)(3) is inapplicable because this matter does not involve redemption of real or personal property from a mortgage or lien, or the partition, sale or division of property.

Pursuant to NRAP 3A(b)(1), an appeal may be taken from a final judgment in an action or proceeding. An order is not final and appealable, however, unless it formally resolves the entire action below.

See KDI Sylvan Pools v. Workman, 107 Nev. 340, 342-343, 810 P.2d 1217, 1219 (1991). Because counterclaims remain pending in the district court, we conclude the district court order granting summary judgment is not final and appealable under NRAP 3A(b)(1). Accordingly, as we lack jurisdiction to resolve this appeal, we grant the unopposed motion to dismiss, and we dismiss this appeal.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Jackie Glass, District Judge
Cary Colt Payne
Bolick Boyer & Fine
Clark County Clerk