

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOLLY MCLEAN,
Appellant,
vs.
GOLDEN COIN, LTD., D/B/A GIRLS
OF GLITTER GULCH,
Respondent.

No. 40703

FILED

OCT 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richards*
CHIEF DEPUTY CLERK

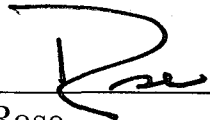
ORDER DISMISSING APPEAL

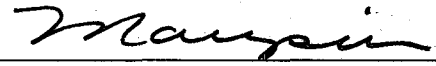
This is an appeal from a district court order that denied appellant's motion to substitute in as class representative and dismissed the underlying case as to respondent. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

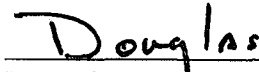
On November 03, 2003, respondent filed a motion to dismiss this appeal on the basis that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties and had not certified its order as final pursuant to NRCP 54(b). Appellant subsequently sought to cure this jurisdictional defect by obtaining NRCP 54(b) certification of the challenged order from the district court. The district court, however, denied appellant's request for NRCP 54(b) certification in an order filed on December 11, 2003. It appears that claims and parties remain pending below. Accordingly, in

light of the district court's denial of appellant's request for NRCP 54(b) certification, we grant respondent's motion and dismiss this appeal.¹

It is so ORDERED.²


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

¹Lee 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).

²We grant respondent's motion for permission to file a reply to appellant's opposition to respondent's motion to dismiss and direct the clerk of this court to file respondent's reply to appellant's opposition to respondent's motion to dismiss, received on January 26, 2004. Additionally, we grant appellant's motion for permission to file a reply to respondent's opposition to appellant's response to this court's order to show cause and direct the clerk of this court to file appellant's reply to respondent's opposition to appellant's response to this court's order to show cause, received on January 30, 2004. Finally, we direct the clerk of this court to return unfiled the opening brief and appendix received on November 24, 2003.

We note that, generally, an appellant may challenge an interlocutory order through an appeal from the final judgment, once it is entered. NRAP 3A(b)(1); Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (noting that interlocutory orders that are not independently appealable can generally be challenged in an appeal from the final judgment). However, it is not clear whether appellant is actually a party to the underlying case. Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994); Albert D. Massi, Ltd. v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995). If she is not a party, then a petition for extraordinary writ relief would be the appropriate vehicle for her to challenge the district court's refusal to allow her to substitute in as class representative. Massi, 111 Nev. 1520, 908 P.2d 705.

cc: Hon. Nancy M. Saitta, District Judge
Lansford W. Levitt, Settlement Judge
Rusing & Lopez
Shirinian & Roitman
Jimmerson Hansen
Clark County Clerk