

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN J. LIEBERT,  
Appellant,  
vs.  
ROBERT M. LIEBERT, DECEASED, BY  
AND THROUGH KATHY LIEBERT,  
SPECIAL ADMINISTRATOR OF THE  
ESTATE OF ROBERT M. LIEBERT,  
Respondent.

No. 41610

FILED

NOV 02 2004

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

ORDER DISMISSING APPEAL AND DENYING  
RESPONDENT'S REQUESTS

This is an appeal from a special order after final judgment that granted respondent's NRCP 60(b) motion, determined that Nevada, not New York, had jurisdiction to grant a divorce to appellant Lynn J. Liebert ("appellant") and Robert M. Liebert ("Mr. Liebert"), deceased, and declared that the decree of divorce previously entered in Nevada was "in full effect." Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

Appellant has moved to voluntarily dismiss this appeal. Respondent, the special administrator of the estate of Mr. Liebert, opposes appellant's motion, and requests that this court make a number of decisions on the merits of this appeal relating to property and probate issues. Respondent also asks this court to impose sanctions and to award attorney fees and costs. Appellant has filed a reply to respondent's opposition.

The parties have not filed any briefs or appendices in this appeal. Without an adequate appellate record this court is unable to enter a decision on the merits of this appeal. See Varnum v. Grady, 90 Nev.

374, 376, 528 P.2d 1027, 1028 (1974) (noting that without the record on appeal briefing and disposition of the appeal's merits could not proceed). Additionally, as previously noted, this is an appeal from a special order after final judgment and not an appeal from the Amended Decree of Divorce that was entered July 17, 2002. See Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992); Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987). Because this is an appeal from a special order after final judgment, a decision on the merits of this appeal would not resolve any disputes arising out of the Amended Decree of Divorce other than the jurisdictional issue. Therefore, review of appellant and Mr. Liebert's property and probate issues, or any other aspect of the Amended Decree of Divorce, are beyond the scope of this appeal.

Moreover, we note that the district court did not resolve appellant and Mr. Liebert's property and probate issues in the first instance. The Amended Decree of Divorce specifically states "that there is property and debt of the parties to be divided; however, this Court may not have jurisdiction over said property and debt and will therefore not make any order affecting these issues." Thus, even if this court endeavored to review the propriety of the entire underlying divorce action and the Amended Decree of Divorce, the property and probate issues between the parties would still remain unresolved because they were not first resolved by the district court. "This court is not a fact-finding tribunal; that function is best performed by the district court." Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983).

In light of the foregoing reasons, we decline respondent's invitation to make a decision on the merits of this appeal. Accordingly, we

deny her first six requests relating to the parties' property and probate issues.

Respondent's last two requests are for this court to impose sanctions against appellant individually and to award attorney fees and costs for alleged misuse and abuse of the appellate judicial system. See NRAP 38; NRAP 39. Under NRAP 38, this court may award sanctions and attorney fees if it determines that an appeal is frivolous, brought for purposes of delay, or otherwise misused the appellate processes. See Imperial Palace v. Dawson, 102 Nev. 88, 715 P.2d 1318 (1986); Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987).

However, a party has the right to pursue an appeal when authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). The instant appeal is authorized under NRAP 3A(b) as an appeal from a special order after final judgment that concluded Nevada had jurisdiction over appellant and Mr. Liebert's marriage and divorce.

Other than respondent's allegations, which are disputed by appellant, there seems to be little evidence to support the contention that this appeal was brought for purposes of delay. Rather, this appeal is the proper method for appellant to challenge the district court's decision that concluded that Nevada had jurisdiction over appellant and Mr. Liebert's marriage and divorce. Accordingly, we deny respondent's request to impose sanctions or award attorney's fees on this basis. See NRAP 38.

Costs on appeal are only taxable for the cost of printing or otherwise producing briefs or appendices and transportation to and from oral argument. See NRAP 39. Because the parties have not filed any

briefs or appendices and there has been no oral argument for this appeal, we deny appellant's request to award costs on appeal.

Respondent also alleges that appellant failed to participate in good faith in this court's settlement program. Under NRAP 16(f), "[t]he failure of a party, or the party's counsel, to participate in good faith in the settlement conference process is grounds for sanctions against the party, the party's counsel, or both."

We note that appellant contests respondent's allegation that she failed to participate in good faith in the settlement conference. Furthermore, we note that Settlement Judge Susan Holland Johnson has not provided this court with any information in support of respondent's claim of lack of good faith. Accordingly, because we are unable to substantiate respondent's claim, we also deny respondent's request to impose sanctions or award attorney's fees on this basis. See NRAP 16(f).

Finally, respondent claims that the imposition of sanctions and award of attorney fees and costs is warranted based on appellant's improper conduct during the district court hearing on the motion to transfer jurisdiction to New York. Based on the district court order that is the subject of this appeal, it appears that there may be some merit to this contention.<sup>1</sup> Specifically, in that order the district court found that appellant "failed to give [Mr. Liebert] or the heirs or the estate a full judicial day to respond as required by rule EDCR 5.31 for the hearing." The district court additionally found that appellant's representations

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<sup>1</sup>Notably, the February 4, 2003, district court order indicates that attorney Philip Singer represented appellant during the district court hearing on transferring jurisdiction. Attorney Layne T. Rushforth represents appellant on appeal.


during that hearing “were not challenged at the time, and now, under scrutiny, do not support” change of jurisdiction to New York.


We note, however, that respondent’s NRCP 60(b) motion to vacate the district court’s order transferring jurisdiction requested the imposition of sanctions. While the district court granted respondent’s motion by vacating the order that transferred jurisdiction, it appears that respondent’s motion for sanctions was left unresolved. Nevertheless, because this alleged misconduct occurred in the district court, the district court is in a better position to consider such a request. Accordingly, also we deny respondent’s request for sanctions and attorney fees and costs based on alleged misconduct in the district court.

Cause appearing, we grant appellant’s motion for a voluntary dismissal of this appeal. This appeal is dismissed with prejudice. NRAP 42(b). The parties may pursue any appropriate further relief in the district court.

It is so ORDERED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>2</sup> In light of this order, this court will take no action on respondent’s “Opposition to Motion for Extension of Time to File Opening Brief and Objection to Extra-Jurisdictional Transcript,” filed on May 7, 2004.

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division  
Susan Holland Johnson, Settlement Judge  
Layne T. Rushforth  
Graham, Wilde, Harker & Boggess  
Clark County Clerk