

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT FIREPLACES PLUS, INC.,
Appellant,
vs.
WESTMARK HOMES, D/B/A
HIGHLAND DEVELOPMENT CO.; AND
HIGHLANDS PARTNERS, LP,
Respondents.

No. 41882

FILED

JAN 08 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order, certified as final under NRCP 54(b), that denied appellant's motion to dismiss in a construction defect action. When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant, on November 5, 2003, to show cause why this appeal should not be dismissed. We were concerned that the order designated in the notice of appeal is not substantively appealable.¹ Specifically, this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.² There is no such authorization for an order denying a motion to dismiss.³ Further,

¹See NRAP 3A(b).

²Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

³First Interstate Bank v. H.C.T., Inc., 108 Nev. 242, 250, 828 P.2d 405, 410 (1992).

NRCP 54(b) is not available to provide interlocutory appellate review of an order that is not a final adjudication of at least one claim for relief or the rights and liabilities of at least one party in a multi-claim or multi-party action.⁴

Appellant responded to our show cause order on December 5, 2003, primarily arguing the merits of the appeal, but also asserting that the district court's order is substantively appealable because it resolves "whether [appellant] can ultimately be sued," notwithstanding appellant's dissolution.⁵ Citing Bally's Grand Hotel v. Reeves,⁶ appellant contends that the district court order functions as a final ruling in that it "completely disposed of the [limitations] issue before the court." But Reeves involved an appeal from an order setting aside an administrative denial of worker's compensation benefits and remanding for a calculation of benefits.⁷ We concluded that the order in Reeves was final and appealable because it resolved the only issue in the case, the employee's entitlement to benefits.⁸ In contrast, the instant district court order fails

⁴Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

⁵See NRS 78.585 (providing a two-year period for suits against dissolved corporations).

⁶112 Nev. 1487, 929 P.2d 936 (1996).

⁷Id. at 1488, 929 P.2d at 936-37.

⁸Id. at 1489, 929 P.2d at 937.

to resolve an issue that adjudicates any claim for relief or the rights and liabilities of any party. Such an order is not appealable, even if accompanied by an NRCP 54(b) certification.⁹

Because we lack jurisdiction over this appeal, we
ORDER this appeal DISMISSED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

⁹See Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (clarifying that “a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs”); Taylor Constr. Co., 100 Nev. at 209, 678 P.2d at 1153 (recognizing that “NRCP 54(b) certification is not available to provide interlocutory appellate review of an order which does not constitute a final adjudication of fewer than all claims or the rights and liabilities of fewer than all the parties in an action”). Notwithstanding the inapplicability of NRCP 54(b) here, we note that the certification is deficient, as the district court failed to make an express determination that there is no just reason for delay. Aldabe v. Evans, 83 Nev. 135, 425 P.2d 598 (1967), cited by Hern v. Erhardt, 113 Nev. 1330, 1334 n.4, 948 P.2d 1195, 1197 n.4 (1997).

cc: Hon. Michael A. Cherry, District Judge
Lansford W. Levitt, Settlement Judge
Bremer, Whyte, Brown & O'Meara, LLP
Lee & Russell
Clark County Clerk