

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KELLY,
Appellant/Cross-Respondent,
vs.
SANTA FE GAMING
CORPORATION/SANTA FE HOTEL
AND CASINO,
Respondent/Cross-Appellant.

No. 41994

FILED

MAR 12 2004

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

ORDER DISMISSING APPEAL AND CROSS-APPEAL

This is an appeal and cross-appeal from a district court order deciding various employee disability benefits issues in consolidated petitions for judicial review. Specifically, the order reverses and remands an appeals officer's decision relating to District Court Case No. A419232 and provides for the district court's retention of jurisdiction during the implementation of this order. The order also reverses and remands several, and affirms one, of an appeals officer's determinations relating to District Court Case No. A452292. The appeal and cross-appeal concern these latter actions with reference to Case No. A452292.

However, when our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed potential jurisdictional defects, we ordered appellant and cross-appellant to show cause why this appeal and cross-appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the order designated in the notice of appeal is not substantively appealable.¹

¹See NRAP 3A(b).

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.² There appears to be no such authorization for an order that affirms in part and reverses in part various decisions of an appeals officer, and remands for further substantive determinations.³ Furthermore, an order that resolves less than all of the claims or the rights and liabilities of all the parties in an action is not appealable as a final judgment absent NRCP 54(b) certification by the district court.⁴ Cases consolidated in the district court are one case for appellate purposes.⁵

Here, the responses of both parties to the show cause order demonstrate that the substantive determination of permanent total disability relating to Case No. A419232, at the very least, remains pending on remand. Consequently, the order does not resolve all of the claims nor all of the rights and liabilities of all parties, and is not a final appealable judgment.⁶ Nor has it been demonstrated that the district court certified as final any portion of the order, or that the district court's order is even

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

³See Clark County Liquor v. Clark, 102 Nev. 654, 730 P.2d 443 (1986).

⁴See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

⁵See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

⁶See, e.g., Ayala v. Caesars Palace, 119 Nev. ___, 71 P.3d 490 (2003); Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 929 P.2d 936 (1996); Pueblo of Sandia v. Babbit, 231 F.3d 878, 880 (D.C. Cir. 2000).

amenable to certification.⁷ Therefore, this court lacks jurisdiction to entertain this appeal and cross-appeal. Accordingly, we

ORDER this appeal and cross-appeal DISMISSED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Kathleen M. Paustian, Settlement Judge
Alan R. Johns
Moran & Associates
Clark County Clerk

⁷See NRCP 54(b); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).