

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBORAH NICHOLS SWAFFORD, AN
INDIVIDUAL,
Appellant,
vs.
TOP RANK, INC., A NEVADA
CORPORATION; BRUCE TRAMPLER,
AN INDIVIDUAL; AND CAMERON
DUNKIN, AN INDIVIDUAL,
Respondents.

No. 42095

FILED

MAR 14 2005

JUANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a partial summary judgment, certified as final under NRCP 54(b),¹ in a contract action. When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, we directed appellant to show cause why this appeal should not be dismissed.

Specifically, appellant Deborah Swafford filed a complaint for breach of contract and related claims against respondents Top Rank, Inc., Bruce Trampler, and Cameron Dunkin. Dunkin filed a counterclaim for breach of contract and related causes of action against Swafford. Additionally, Top Rank and Trampler filed a third-party complaint for indemnification and contribution against Dean Chance, who is not a party to this appeal.

On August 26, 2003, the district court entered an order granting summary judgment in favor of Top Rank and Trampler on all of

¹We note that NRCP 54(b) was amended effective January 1, 2005, however, we consider this appeal under the former version of the rule.

15-04955

the claims in Swafford's complaint. Concerning NRCP 54(b) certification, the August order states, "[t]he Court expressly determines that there is no just reason for delay and directs the Clerk to enter a final judgment on these claims [NRCP 54(b)]." Hand-written on the order, apparently by the district judge, is the statement "the question of NRCP 54(b) certification is reserved pending further motion practice directed thereto." Notice of the order's entry was served by mail on August 27, 2003. On September 19, 2003, Swafford filed this appeal from the August 26 order.

In her docketing statement, Swafford indicates that her claims against defendant Dunkin and Dunkin's counterclaims against Swafford were dismissed by stipulation in a September 22, 2003 order. Swafford did not provide a copy of the September 22 order, but we note that it was filed after Swafford appealed on September 19. Swafford also indicates in her docketing statement that Top Rank and Trampler's third-party complaint against Dean Chance for contribution and indemnification is still pending. Thus it appeared that we lacked jurisdiction over this appeal because the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties at the time Swafford filed her notice of appeal.²

Moreover, it appeared that NRCP 54(b) certification of the August 26, 2003 order might be improper because (1) the district court's hand-written notation indicated that the court had not finally determined that the order should be certified; and (2) the August 26 order might not be amenable to NRCP 54(b) certification because reviewing the matter at


²Lee 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).

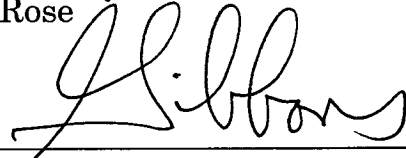
this stage of the proceedings could result in piecemeal litigation, defeating the purpose of NRCP 54(b).³

Accordingly, on December 21, 2004, we directed Swafford to show cause within thirty days why this appeal should not be dismissed for lack of jurisdiction. We cautioned Swafford that failure to demonstrate that this court has jurisdiction might result in the dismissal of this appeal.

As of the date of this order, Swafford has not filed a response to our show cause order. Therefore, as Swafford has not demonstrated that this court has jurisdiction over her appeal, we dismiss it.

It is so ORDERED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Mark R. Denton, District Judge
Thomas J. Tanksley, Settlement Judge
Douglas H. Clark
Beckley Singleton, Chtd./Las Vegas
Harrison Kemp & Jones, LLP
Free Lance Court Reporters
Clark County Clerk

³Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).