

IN THE SUPREME COURT OF THE STATE OF NEVADA

ED GARDOCKI, AN INDIVIDUAL; AND  
NOAH, INC., A NEVADA  
CORPORATION,  
Appellants,  
vs.  
RONALD SWEATT AND LYDIA  
SWEATT, INDIVIDUALS; MOTOR  
CITY III, LLC, A LIMITED LIABILITY  
CORPORATION; ROBERT KATZMAN,  
AN INDIVIDUAL; ALLAN RUBIN; AND  
RUBIN & RUBIN, PLLC,  
Respondents.

No. 42660

**FILED**

JUN 28 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a minute order granting summary judgment in favor of certain defendants and from an order granting partial summary judgment as to a declaratory relief claim that was certified as final under NRCPC 54(b). Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

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 directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondents' reply,<sup>1</sup> we conclude that we lack jurisdiction over this appeal.

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<sup>1</sup>On May 20, 2004, appellants filed a motion to extend the time to file a response. We grant the motion, and direct the clerk of this court to file appellants' response provisionally received on June 1, 2004, and respondents' reply received on June 7, 2004.

First, appellants' January 14, 2004 notice of appeal taken from the summary judgment in favor of respondents Allan Rubin and Rubin & Rubin was filed before the district court entered a written order on January 26, 2004. A notice of appeal filed before a written order is entered is premature and fails to vest jurisdiction in this court.<sup>2</sup> Appellants' reliance on Knox v. Dick,<sup>3</sup> to argue that the premature notice of appeal was merely a technical defect, is misplaced. In Knox, this court deemed it a technical jurisdictional defect where the appellant appealed from an order that was entered and otherwise appealable except for the lack of a certification of finality under NRCP 54(b). The belated entry of an order certifying the order as final was deemed an excusable, technical defect under these facts.<sup>4</sup> This narrow exception has not been extended into other areas of jurisdictional defects.<sup>5</sup> Thus, Knox does not apply to the matter at hand, which involves the premature filing of a notice of appeal from an order not yet entered.

As to appellants' second notice of appeal from the September 24, 2002 order, certified as final under NRCP 54(b), we conclude that the certification is improper. Certification of finality under NRCP 54(b) is generally not proper in cases, such as this, with multiple causes of action arising from a single transaction or series of related transactions and that

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<sup>2</sup>NRAP 4(a)(1); see also Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

<sup>3</sup>99 Nev. 514, 665 P.2d 267 (1983).


<sup>4</sup>Id. at 516-17, 665 P.2d at 269.


<sup>5</sup>See, e.g., Rust, 103 Nev. at 689, 747 P.2d at 1382.

would ultimately result in piecemeal litigation.<sup>6</sup> Accordingly, as we lack jurisdiction, we dismiss this appeal. We note that appellants may properly appeal from the final judgment when it is entered.

It is so ORDERED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Lester H. Berkson, Settlement Judge  
Callister & Reynolds  
Hall Jaffe & Clayton, LLP  
Kerr & Associates  
Laxalt & Nomura, Ltd./Reno  
Joanie Grime, Court Reporter  
Clark County Clerk

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<sup>6</sup>See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).