

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA GENERAL INSURANCE  
COMPANY, A NEVADA  
CORPORATION,  
Appellant,

vs.

ERIC S. PEPPER, INDIVIDUALLY,  
AND AS THE ASSIGNEE OF THE  
RIGHTS OF PHILLIP M. HOOKER,  
AND PHILLIP M. HOOKER, AN  
INDIVIDUAL,  
Respondents.

No. 42769

FILED

FEB 03 2005

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

ORDER DISMISSING APPEAL AND IMPOSING SANCTIONS

This is an appeal from a January 27, 2004 district court order denying appellant's motion, under NRCP 60(b), to set aside a default judgment. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On June 22, 2004, we issued an order to show cause why this appeal should not be dismissed on jurisdictional grounds, because our preliminary review of the docketing statement and other documents before us showed that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties, and the district court had not certified its order as final under NRCP 54(b).<sup>1</sup> Appellant responded by obtaining an NRCP 54(b) certification from the district court, which certified that the January 27, 2004 order was a final

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<sup>1</sup>The district court applied the former version of NRCP 54(b), which was in effect at the time. We have likewise applied the former version, but note that Rule 54(b) was amended effective January 1, 2005.

judgment and that there was no just reason for delay in reviewing that final judgment “regarding the above captioned matter only.” The caption was for the case of Pepper v. Hooker, Eighth Judicial District Court Case Number 97-A-370701-C. The certification expressly stated that it was “not applicable to matters with which this case had been consolidated and that are still subject to litigation in this court, namely, Nevada General Insurance Company v. Hooker, Eighth Judicial District Court Case No. A434609, and Pepper and Hooker v. Nevada General Insurance Company, Eighth Judicial District Court Case No. A464027.”

The district court’s certification clarified to this court that two other cases remain pending, but appellant’s attorney did not attach the complaints in those cases to the docketing statement or explain their relationship to the current appeal. Consequently, on August 31, 2004, this court issued a second order to show cause why this appeal should not be dismissed for lack of jurisdiction and why sanctions should not be imposed for appellant’s failure to file an accurate docketing statement.

In his second response, appellant’s attorney claimed that the issues in the consolidated cases are sufficiently separate to allow for a proper appeal to this court, and apologized for his “clerical error” in not bringing the other cases to this court’s attention in his docketing statement.

We conclude that this appeal is jurisdictionally defective. When cases are consolidated in the district court, they become one action for purposes of NRCP 54(b).<sup>2</sup> Until all claims against all parties to the

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<sup>2</sup>Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

entire consolidated case are finally resolved, no final, appealable judgment has been entered.<sup>3</sup> However, under former NRCP 54(b), an order that finally resolved a separate claim for relief or completely removed a party could be appealed if properly certified.<sup>4</sup>

The district court's NRCP 54(b) certification does not confer jurisdiction on this court. It does not, by its terms, even apply to Nevada General Insurance Company's action against Pepper and Hooker. And, although the former version of NRCP 54(b) applied when a separate claim for relief was resolved, the district court's January 27 order denying the motion to set aside the default judgment did not resolve any claim for relief. Further, if we reviewed the certified order, we would necessarily have to examine the circumstances underlying Hooker's attorney's withdrawal. Any determination regarding the withdrawal issue would impact issues remaining in the case below, such as whether appellant's actions amounted to a breach of contract or bad faith. Accordingly, the district court's certification was an abuse of discretion.<sup>5</sup> As we lack jurisdiction to consider this appeal, we dismiss it.

Finally, counsel's failure to provide complete and accurate information and documents regarding this appeal has wasted this court's

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<sup>3</sup>See id.; Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

<sup>4</sup>See NRCP 54(b) (2004); Mallin, 106 Nev. 606, 797 P.2d 978; Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

<sup>5</sup>See Hallicrafters, 102 Nev. 526, 728 P.2d 441. Further, while a post-final judgment order denying an NRCP 60(b) motion may be appealed, see, e.g., Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987), there has been no final judgment entered in this case. Consequently, the order denying NRCP 60(b) relief is interlocutory in nature.

valuable resources and makes the imposition of sanctions appropriate.<sup>6</sup> Accordingly, we direct appellant's counsel, Michael C. Mills, to pay \$500 in sanctions to the Supreme Court Law Library within thirty days from the date of this order and to provide proof of the payment to this court's clerk.

It is so ORDERED.

Becker, C.J.  
Becker

Rose, J.  
Rose

Hardesty, J.  
Hardesty

cc: Hon. Michael A. Cherry, District Judge  
Leonard I. Gang, Settlement Judge  
Mills & Associates  
McCrea Martin Allison, Ltd.  
Clark County Clerk  
Supreme Court Law Library

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<sup>6</sup>See NRAP 14(c); Moran v. Bonneville Square Assocs., 117 Nev. 525, 25 P.3d 898 (2001); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991).