

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE HONORABLE JACK
SCHROEDER, JUSTICE OF THE
PEACE, RENO TOWNSHIP, RENO
JUSTICE COURT,

Appellant,

vs.

THE STATE OF NEVADA; RICHARD A.
GAMMICK, WASHOE COUNTY
DISTRICT ATTORNEY; AND THE CITY
OF RENO,

Respondents.

No. 42776

FILED

JUL 27 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order that grants respondents' petition for writ of mandamus and directs appellant Justice of the Peace to vacate an order that he issued in an underlying justice's court matter. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On May 14, 2004, 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 ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, we were concerned that appellant, as Justice of the Peace, was not an aggrieved party with standing to appeal a district

court order that directed him to vacate his latest order in an underlying justice's court matter.¹

Appellant timely filed a response to our show cause order and a corresponding motion under NRAP 43 to substitute Stewart Handte, the district court real party in interest, as appellant in this appeal. In his response, appellant explains that he believes he is an appropriate party to appeal the district court's order because he was named as a respondent to the district court writ petition and because the order "removes the jurisdiction of the Justices of the Peace in applications for seizure orders involving potential felony cases." Nevertheless, he states, the proposed substitution of Handte as appellant obviates the standing issue. Respondents did not file a reply.

Only an aggrieved party may appeal.² A party is aggrieved "when either a personal right or right of property is adversely and substantially affected' by a district court's ruling."³ Although appellant was named as a nominal respondent to the district court writ petition, he was not a party to the underlying dispute. Nor were appellant's personal or property rights affected by the district court's order. Rather, the order

¹See NRAP 3A(a).

²NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

³Ginsburg, 110 Nev. at 446, 874 P.2d at 734 (quoting Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)).

affected real party in interest Handte's rights to his seized property. Therefore, appellant is not an "aggrieved party" with standing to appeal the district court's order.⁴

And, although appellant moves to substitute Handte as party-appellant pursuant to NRAP 43, NRAP 43(b) allows for the substitution of a party to an appeal only when "necessary for any reason other than death." NRAP 43(b) is patterned after FRAP 43(b). Federal courts have found substitution "necessary" under Rule 43(b) when "a party is incapable of continuing the suit, such as where a party becomes incompetent, or a transfer of interest in the company or property involved in the suit has occurred,' or the focus of the litigation has shifted to make

⁴See, e.g., Municipal Court v. Superior Court, 857 P.2d 325, 327 (Cal. 1993) (concluding that a municipal court has no standing to petition for writ relief from a superior court's decision involving the municipal court's use of commissioners to make probable cause determinations, even though no one else had appealed from the decision, and quoting Municipal Court v. Superior Court (Swenson), 249 Cal. Rptr. 182, 184 (Ct. App. 1988) for the proposition that "there is no procedure authorized whereby a municipal court, disagreeing with a superior court's decision on review, may come to the next court in hierarchy . . . and ask it to set the superior court straight"); People v. Recorder's Court Judge, 239 N.W.2d 185 (Mich. Ct. App. 1975) (concluding that a judge who was in the circuit court as a nominal defendant had no standing as an aggrieved party to appeal the ensuing order of superintending control); De Lucca v. Price, 79 P. 853, 854 (Cal. 1905) ("A tribunal, board, or officer exercising judicial functions is not authorized to litigate, as a party, the mere question as to whether it has, in the doing of an official act, exceeded its jurisdiction.").

another entity the real party in interest.”⁵ The court in Alabama Power Co. v. I.C.C.⁶ stated:


“Necessary” means that a party to the suit is unable to continue to litigate, not [as has been argued] that an original party has voluntarily chosen to stop litigating. This common-sense interpretation is bolstered both by the other clauses of Rule 43 and caselaw interpreting that Rule. Subsections (a) and (c) provide for substitution in situations where a party cannot continue an appeal due to a party’s death or removal from office. The most natural reading of subsection (b) is to permit substitution in similar situations where a party is incapable of continuing the suit

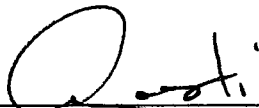
In this case, NRAP 43 substitution is not “necessary”; nothing has occurred to make a once-proper appellant an inappropriate party to or incapable of pursuing this appeal. Rather, as noted above, appellant was never the proper party to pursue the appeal. Although it appears that Handte, an original party to the district court proceedings, may have standing to appeal the district court’s order, he may not do so through NRAP 43 substitution. Therefore, we deny appellant’s motion to substitute parties.


⁵Jones v. Bd. of Governors of Fed. Reserve System, 79 F.3d 1168, 1170 (D.C. Cir. 1996) (citations and brackets omitted).

⁶852 F.2d 1361, 1366 (D.C. Cir. 1988).

Further, as appellant does not have standing to appeal, we conclude that we lack jurisdiction over this appeal. Accordingly, we ORDER this appeal DISMISSED.⁷


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Law Offices of Mark Wray
Reno City Attorney
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷As it appears that no notice of the district court order's entry has been served, we note that Handte may still be able to perfect an appeal in this case. See NRAP 4.