

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE MCCLINTOCK,
Appellant,
vs.
KELLY L. MCCLINTOCK, F/K/A
KELLY LEE TOLAS,
Respondent.

No. 42703

FILED

AUG 29 2005

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

STEVE W. MCCLINTOCK,
Appellant,
vs.
KELLY L. MCCLINTOCK,
Respondent.

No. 43048

ORDER DISMISSING APPEAL (DOCKET NO. 43048)
AND ALLOWING APPEAL TO PROCEED (DOCKET NO. 42703)

These consolidated appeals concern two separate district court orders granting motions for nunc pro tunc entry of two different divorce decrees. Respondent has filed a motion to dismiss these appeals for lack of jurisdiction; appellant opposes respondent's motion, and respondent has filed a reply.

Appellant Steve McClintock and respondent Kelly McClintock were married on September 3, 1993. The day before the McClintock marriage, Kelly and her first husband, John Tolas, filed a joint petition for divorce. Unbeknownst to Steve and Kelly, the Tolas divorce decree was not entered until September 23, 1993. After their wedding, Steve and Kelly lived together until November 2002, when Kelly filed a complaint for divorce from Steve. About that time, the parties discovered that Kelly and

John Tolas were still married at the time Steve and Kelly were married. In April 2003, Steve filed an answer to the complaint for divorce and a counter-motion for an annulment. Steve contended that the marriage was void because Kelly had not yet obtained a divorce when he and Kelly were married.

On April 10, 2003, a stipulation and order was entered declaring the McClintock marriage void based on the fact that Kelly was still married to Tolas at the time she married Steve. On May 2, 2003, Steve married his third wife.

Thereafter, Kelly moved the district court, in the Tolas divorce case, D-167710, for nunc pro tunc entry of the divorce decree to September 2, 1993.¹ Steve filed a motion to intervene in the proceedings, and Kelly opposed Steve's motion. On October 10, 2003, the court entered an order addressing Steve's motion, stating that Steve was "granted permission to intervene in the Tolas case in the limited capacity, which shall be that Steve may participate in the evidentiary hearing in regard to such aspects of Kelly's nunc pro tunc motion that he can demonstrate evidences a material effect on the outcome of Steve's position in the McClintock matter." After a hearing, in which Steve testified, the district court entered an order on December 31, 2003, granting Kelly's nunc pro tunc motion. The court's decision effectively legitimized the McClintock marriage, which invalidated Steve's marriage to his third wife. Steve has timely appealed (Docket No. 42703).

¹John Tolas did not participate in the proceedings.

Thereafter, the parties attempted settlement in the McClintock divorce proceedings, D-293005. On February 20, 2004, based on the parties' stipulation, the district court entered a nunc pro tunc divorce decree, declaring the parties divorced as of May 1, 2003, "for the purpose of holding valid as a matter of law Steve's current marriage to a later spouse, which status could otherwise have been affected under other orders of this court in a separate action." The McClintock divorce proceedings were bifurcated and property issues remain. Steve has timely appealed (Docket No. 43048).

In her motion to dismiss these appeals, Kelly contends that Steve does not have standing to appeal from the December 31, 2003 order in the Tolas divorce proceeding, as he was not granted permission to intervene, and that the caption was not amended to reflect Steve as a named party. As for the February 20, 2004 order in the McClintock divorce decree proceedings, Kelly contends that the order is not final since the proceedings were bifurcated, and Steve is not aggrieved by the order, since he agreed to its terms. Steve counters that he was a party to the Tolas proceedings, because the district court granted him permission to intervene, as it was "clear that the court believed Steve had an interest in the outcome of the Tolas proceedings." With regard to the February order, Steve contends that he was under great duress when he stipulated to the nunc pro tunc order, because the Tolas order made him a bigamist and invalidated his current marriage.

Permissive intervention under NRCP 24(b) is very broad and is permitted in an action "when an applicant's claim or defense and the

main action have a question of law or fact in common. In exercising its discretion the court [must] consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”² In Aetna Life & Casualty v. Rowan,³ this court recognized that once a motion to intervene is granted, the intervenor becomes a party to the action. The October 10, 2003 order expressly granted Steve permission to intervene in the Tolas case based on his interest in the outcome of the proceedings. That the caption was not amended does not establish that the court denied Steve’s motion to intervene. In addition, the December 31, 2003 order that granted Kelly’s nunc pro tunc motion referred to Steve and Kelly as “the parties.” Thus, we conclude that the district court granted Steve’s motion to intervene and that he became a party.

With respect to Kelly’s contention that Steve is not aggrieved by the district court orders, it is well settled that only an aggrieved party has standing to appeal.⁴ A party is “aggrieved” within the meaning of NRAP 3A(a) when either a personal right or right of property is adversely and substantially affected by a district court’s ruling.⁵ Clearly Steve’s

²NRCP 24(b)(2).

³107 Nev. 362, 812 P.2d 350 (1991); see also, Gladys Baker Olsen Fam. Trust v. Olsen 109 Nev. 838, 858 P.2d 385 (1993).

⁴See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

⁵Estate of Hughes v. First Nat’l Bank, 96 Nev. 178, 605 P.2d 1149 (1980).

personal rights have been adversely affected by the December order, since it invalidates the April 2003 order that declared Steve and Kelly's marriage void, and the December order rendered Steve's marriage to his current wife invalid. And although Steve stipulated to the February nunc pro tunc order in the McClintock divorce proceedings, he did so because he wanted his current marriage to remain valid, thus, he is aggrieved by both of the orders within the meaning of NRAP 3A(a).

And finally, an appeal may be taken from a final judgment in an action or proceeding commenced in the court in which the judgment is rendered.⁶ A final judgment is one that disposes of the issues presented in the case and leaves nothing for the future consideration of the court.⁷ That an order must be final "before an appeal may be taken is not merely technical, but is a crucial part of an efficient justice system."⁸ Thus, because the February 2004 order bifurcated the McClintock divorce proceedings and property issues remain unresolved, the February order is not final, and this court lacks jurisdiction to consider the appeal.⁹ Accordingly, we dismiss the appeal as to Docket No. 43048, and we allow the appeal in Docket No. 42703 to proceed.

⁶NRAP 3A(b)(1).


⁷See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

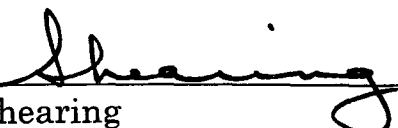
⁸Reno Hilton Resort Corp. v. Verderber, 121 Nev. ___, ___, 106 P.3d 134, 136-37 (2005).

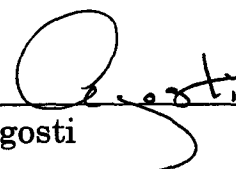
⁹If appellant wishes to challenge the February order, at this juncture, he may file a writ petition.

We reinstate briefing in Docket No. 42703. Respondent shall have thirty days from the date of this order within which to file and serve the answering brief. Appellant may file and serve any reply brief within thirty days from the date that the answering brief is served. No extensions of time to this briefing schedule will be granted absent extreme and unforeseeable circumstances. We deny Kelly's request for attorney fees and sanctions.

It is so ORDERED.¹⁰


_____, V.C.J.
Rose


_____, Sr. J.
Shearing


_____, Sr. J.
Agosti

¹⁰In light of this order we deny as moot respondent's motion for an extension of time in which to file an answering brief.

The Honorable Miriam Shearing, Senior Justice, and the Honorable Deborah A. Agosti, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 14, 2005.

cc: Eighth Judicial District Court Dept. F, District Judge, Family Court
Division
Bruce I. Shapiro, Ltd.
Law Office of Marshal S. Willick, PC
Clark County Clerk