

IN THE SUPREME COURT OF THE STATE OF NEVADA

NANCY SHAW, INDIVIDUALLY
AND AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF THOMAS SHAW,
DECEASED; MELISSA SHAW
ELLETT; AND DENNY ELLETT,
Appellants,

vs.

NEWMONT MIDAS OPERATIONS,
INC., A NEVADA CORPORATION;
NEWMONT USA LIMITED, A
DELAWARE CORPORATION;
NEWMONT GOLD COMPANY, A
DELAWARE CORPORATION;
NEWMONT MIDAS HOLDINGS
LIMITED, A NEVADA
CORPORATION; TOM KERR; LEE
MORRISON; BRANT HINZE; WAYNE
MURDEY; AND DEBBIE PAPARICH,
INDIVIDUALLY AND AS
EMPLOYEES OF NEWMONT,
Respondents.

No. 55469

FILED

JUL 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing a first amended complaint and granting appellants leave to file a second amended complaint. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Respondents have moved to dismiss this appeal, arguing that no final judgment has been entered because, after the first amended complaint was dismissed, appellants timely filed a second amended complaint in the district court, which remains pending. Appellants oppose

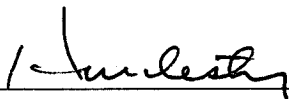
the motion, asserting, without citing any authority, that this court has jurisdiction to consider the appeal, and pointing out that they filed their notice of appeal from the dismissal order in an abundance of caution to preserve any challenge to that order.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). NRAP 3A(b)(1) authorizes an appeal from a district court's final written judgment adjudicating all the rights and liabilities of all the parties. Lee 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). In their docketing statement, in response to the question asking what statute or authority provides this court jurisdiction to review the appealed order, appellants checked the "other" box and specified that the challenged district court order dismissed the entire complaint with prejudice under NRCP 12(b)(5) for failure to state a claim. Appellants concede, however, that the district court's order nevertheless allowed them to file a second amended complaint within 20 days from the dismissal order, and that appellants did timely file a second amended complaint.¹ The parties also concede that the second amended complaints' claims presently remain pending in the district court, and the district court has


¹Appellants did not seek clarification of the district court's dismissal order.

not yet entered a final judgment in this matter. Accordingly, this court lacks jurisdiction, and we dismiss this appeal.²

It is so ORDERED.³

, J.
Hardesty

, J.
Douglas

, J.
Pickering

cc: Hon. Patrick Flanagan, District Judge
Wm. Patterson Cashill, Settlement Judge
Linton & Associates, P.C.
Surratt Law Practice, PC
Holland & Hart LLP/Reno
Piscevich & Fenner
Washoe District Court Clerk

²This dismissal does not affect any party's right to appeal following a final judgment in the district court. Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

Appellants' alternative request for leave to file a writ petition in this court "to request the district court to clarify its Order" is denied as unnecessary. See NRAP 21(a)(1).

³We deny respondents' request for attorney fees and costs sanctions.