

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY J. BURRIOLA,
Appellant,
vs.
RENEE BAKER, WARDEN; AND
JAMES COX,
Respondents.

No. 69401

FILED

OCT 11 2016

TRACIE K. LIDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court summary judgment in a civil rights action.

Our review of the documents before us on appeal reveals a jurisdictional defect. In particular, the record demonstrates that a claim remains pending below, such that no final judgment has been entered in the underlying case. *See* NRAP 3A(b)(1) (providing that an appeal may be taken from “[a] final judgment entered in an action”); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment as one that disposes of all of the issues in the case and leaves nothing for the district court’s future consideration with the exception of post-judgment issues such as attorney fees and costs).


In his original complaint, appellant, an inmate, claimed that respondents violated his rights to due process and freedom from cruel and unusual punishment by depriving him of proper footwear. Before respondents served an answer, appellant filed an amended complaint, adding a claim relating to his confinement in disciplinary segregation and limitations on his telephone usage as a result of that confinement. *See*

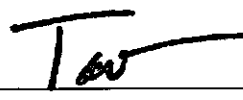
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NRCP 15(a) (“A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . .”).

Respondents challenged the amended complaint on procedural grounds, but the district court never resolved that challenge or otherwise ruled on the effectiveness of the amended complaint. Moreover, although the district court granted respondents summary judgment on the claims relating to appellant’s footwear, nothing in the record indicates that the claim relating to disciplinary segregation was ever resolved by the district court. As a result, that claim remains pending below, and, thus, we lack jurisdiction over this appeal. See NRAP 3A(b)(1); *Lee*, 116 Nev. at 426, 996 P.2d at 417; see also *Pengilly v. Rancho Santa Fe Homeowners Ass’n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (explaining that no appeal may be taken except where authorized by rule or statute). Accordingly, we

ORDER this appeal DISMISSED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹In light of the foregoing, we deny appellant’s request that we consider the attachments to his September 19, 2016, filing as moot.

cc: Hon. Steve L. Dobrescu, District Judge
Anthony John Burriola
Attorney General/Carson City
White Pine County Clerk