

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEAN KIM,
Appellant,
vs.
MEADOWOOD MALL, SPE, LLC,
Respondent.

No. 77626-COA

FILED

SEP 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yancy
DEPUTY CLERK

ORDER DISMISSING APPEAL

Dean Kim appeals from a district court order granting a motion seeking to voluntarily dismiss the underlying action without prejudice. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Kim initiated the underlying action by filing a complaint against respondent Meadowood Mall, SPE, LLC, for trespass and conversion in connection with Meadowood evicting Kim from its premises and removing and storing Kim's personal property. Meadowood filed an answer and counterclaim against Kim asserting various causes of action in connection with his alleged breach of the parties' commercial lease agreement. The district court ultimately dismissed Kim's claims and later granted summary judgment in favor of Meadowood on all of its counterclaims. Kim, treating the order granting summary judgment as a final order, appealed from it, and the supreme court transferred the appeal to this court.

Meanwhile, Meadowood filed a "motion for damages" in the district court, but it did not file a request for submission as required under

the local rules for the district court to render a decision on the motion. *See* WDCR 12(4). This court later affirmed the district court's order granting summary judgment in favor of Meadowood, *see Kim v. Meadowood Mall, SPE, LLC*, Docket No. 72463-COA (Order of Affirmance, April 30, 2018), and the supreme court denied Kim's petition for review of that decision, *see id.*, Docket No. 72463 (Order Denying Petition for Review, June 22, 2018). Meadowood then filed a motion in the district court seeking to voluntarily dismiss its counterclaims under NRCP 41(a)(2). Citing "consideration[s] of judicial economy and resources of the parties," Meadowood indicated to the district court that it did not intend to submit its damages motion for decision, and it requested an order dismissing its counterclaims without prejudice, with each party to bear their own fees and costs. The district court granted Meadowood's unopposed motion, and this appeal followed.

A party seeking to appeal from a district court order must have standing to do so under NRAP 3A(a), meaning he or she must be "aggrieved by [the order]." A party is so aggrieved "when either a personal right or right of property is adversely and substantially affected by a district court's ruling." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (internal quotation marks omitted). Because the district court's order dismissing Meadowood's counterclaims without prejudice did not

have such an effect on Kim's rights, he is not aggrieved by it, and he therefore lacks standing to pursue this appeal.¹ Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We note that Kim substantively challenged the district court's order granting summary judgment in his prior appeal before this court, and to the extent he repeats those arguments here, they have already been resolved. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case."). Moreover, to the extent he presents new arguments in this appeal concerning the district court's prejudgment rulings, he should have raised those issues in his prior appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised on appeal are deemed waived). Finally, to the extent there may have been a jurisdictional defect in Kim's prior appeal in light of the outstanding issue of damages, we—as Kim did in the prior appeal—treat the district court's order granting summary judgment as having been the final appealable judgment in this case. *Cf. Witter v. State*, 135 Nev. 412, 416, 452 P.3d 406, 409 (2019) ("This court has long precluded a litigant from arguing that a judgment was not final or that this court lacked jurisdiction in a prior appeal when the party treated the judgment as final.").

cc: Hon. Jerome M. Polaha, District Judge
Dean Kim
Kaempfer Crowell/Reno
Washoe District Court Clerk