

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBERT ROY HOLMES,
Appellant,
vs.
CAPUCINE YOLANDA HOLMES,
Respondent.

No. 81223-COA

FILED

FEB 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART AND
AFFIRMING IN PART*

Wilbert Roy Holmes appeals from a district court order in related tort actions. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In the proceedings below, the district court administratively reassigned nine cases filed by Holmes to its department and issued an order to show cause why Holmes should not be declared a vexatious litigant. Some of those cases were previously dismissed and some remained pending at the time the order to show cause was issued. Following a hearing, the district court found that Holmes is a vexatious litigant based on his numerous, repetitive filings, and found that his complaints were filed without a reasonable basis in law or fact, or were brought to harass. Accordingly, the court entered an order limiting Holmes' ability to file complaints in the Eighth Judicial District Court, struck the complaints filed in six of the enumerated cases, closed those six cases, noted that it would take appropriate action on two of the cases after the appeals in those cases were resolved, and reassigned one case back to its original department for further proceedings. This appeal followed.

As an initial matter, our review of the documents submitted to this court pursuant to NRAP 3(g) reveals a jurisdictional defect as to the district court's order regarding the appeal related to Eighth Judicial District Court Case No. A-19-795917. Namely, because the court had previously dismissed that case, the district court's order here—declaring Holmes a vexatious litigant and striking the complaint—was a post-judgment order. And a vexatious litigant order is not appealable as a special order entered after final judgment. *Peck v. Crouser*, 129 Nev. 120, 123-24, 295 P.3d 586, 588 (2013). Likewise, to the extent the order purported to strike the complaint, the order did not impact Holmes' substantive rights arising out of the final judgment as the case had already been dismissed. *See id.* at 123, 295 P.3d at 587-88 (explaining that an appealable special order entered after final judgment must affect a party's rights incorporated in the judgment). Accordingly, we lack jurisdiction and necessarily dismiss this appeal to the extent it challenges the determination in Eighth Judicial District Court Case No. A-19-795917. *See id.* Similarly, the district court's order expressly takes no action as to Eighth Judicial District Court Case Nos. A-17-760443, A-19-790299, and A-19-795057; thus, there is nothing for this court to review with regard to those cases, and we likewise dismiss this appeal to the extent it purports to bring any challenge as to those cases. *See* NRAP 3A(a) (providing that only a party who is aggrieved by an appealable judgment may appeal from the judgment).

As to the district court's order declaring Holmes a vexatious litigant and striking the complaints in the remaining district court cases—Eighth Judicial District Court Case Nos. A-19-796138, A-19-796333, A-19-796526, A-19-805847, and A-19-809415—to the extent the order effectively dismisses those cases, which remained pending before the district court, the

challenged order constitutes a final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426-27, 996 P.2d 416, 417-18 (2000) (explaining that, to constitute a final judgment for appeal purposes, an order must dispose of all issues presented in the case, leaving nothing for future consideration, and whether an order is appealable depends on what the order “substantively accomplishes” rather than its title). And given that the challenged order constitutes a final judgment as to these remaining cases, the interlocutory vexatious litigant determination contained in that order with regard to these matters is reviewable on appeal. *Peck*, 129 Nev. at 123, 295 P.3d at 587 (noting that vexatious litigant orders are reviewable in the context of an appeal from a final judgment).


On appeal, Holmes has failed to raise any arguments challenging the district court’s effective dismissal of these remaining cases. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that matters not raised on appeal are waived). Thus, we discern no error in the district court’s striking the complaints, effectively dismissing the same. And although Holmes appears to challenge the district court’s conclusion that he is a vexatious litigant and that his complaints were filed without a reasonable basis, he has failed to provide any cogent argument demonstrating the same. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider claims that are not cogently argued).

Regardless, we note that based on our review of the record, the district court did not abuse its discretion in concluding Holmes was a vexatious litigant. *See Jordan v. State, Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005), *abrogated on other grounds*

by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008) (providing that restrictive orders limiting vexatious litigants from accessing the courts are reviewed for an abuse of discretion). In particular, we note that the district court provided Holmes with notice and an opportunity to be heard; provided a record explaining the reason the restrictive order was needed; made numerous factual findings as to the frivolous and harassing nature of the filings, including findings made by the departments in which the cases were originally assigned; and narrowly tailored the restrictive order to address the specific concern regarding Holmes' filings. *See id.* at 60-62, 110 P.3d at 42-44 (explaining the factors the district court's order must include when limiting a litigant's access to the courts). Accordingly, we cannot conclude that the district court abused its discretion in finding Holmes' filings were made without reasonable grounds and declaring Holmes a vexatious litigant, and we affirm the district court's order as to the remaining five cases. *See id.* at 62, 110 P.3d at 44.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Wilbert Roy Holmes
Heaton Fontano, Ltd.
Eighth District Court Clerk