

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS PAVING CORPORATION,
Appellant/Cross-Respondent,
vs.
LEROY BENAVIDEZ, AN INDIVIDUAL,
Respondent,
and
SUPERIOR TRAFFIC SERVICES
CORP.,
Respondent/Cross-Appellant,

No. 85827

FILED

MAR 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEALS

This is an appeal from a July 1, 2022, district court order granting a motion for partial summary judgment and an appeal and cross-appeal from a November 15, 2022, district court order granting in part and denying in part a motion for reconsideration of the July 1, 2022, order. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

When initial review of the docketing statements and documents before this court revealed a potential jurisdictional defect, this court ordered the parties to show cause why these appeals should not be dismissed for lack of jurisdiction. In particular, it did not appear that the November 15, 2022, order is appealable as a final judgment because it does not make or decline to make any award of damages regarding Las Vegas Paving Corporation's (LVPC) claim for breach of contract based on the duty to defend. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment). The order also does not resolve LVPC's claim for breach of contract based on the duty to indemnify. Although the district court purported to certify this order as final under NRCP 54(b), such certification appeared improper where LVPC's claim for breach of contract,

as it relates to both failure to defend and failure to indemnify, has not been fully resolved by the district court. *See Taylor Const. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (explaining that certification pursuant to NRCP 54(b) “is not available to provide interlocutory appellate review of an order which does not constitute a final adjudication of fewer than all claims or the rights and liabilities of fewer than all the parties in an action”).

It also appeared the July 1, 2022, order is not appealable as a final judgment because it does not finally resolve all claims asserted in the district court action. And no other statute or rule appeared to allow an appeal from either of the challenged district court orders. *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (this court “may only consider appeals authorized by statute or court rule”).

In response, LVPC contends that the November 15, 2022, order effectively resolved the breach of contract claim between itself and Superior Traffic Services (Superior) because the order finally interpreted the duty to defend and duty to indemnify provisions. LVPC concedes that neither order considers damages, but asserts damages “should be a matter of mechanical application” that does not prevent NRCP 54(b) certification. LVPC also expresses hope that this court will consider the appeal now to avoid further litigation. Superior joins LVPC’s response and asserts, without argument, that the appeal is from a final judgment certified as final under NRCP 54(b).

The November 15, 2022, order is not a final judgment because it does not finally resolve all claims in the underlying action. *See Lee*, 116 Nev. at 426, 996 P.2d at 417. The order is not amenable to a certification of finality under NRCP 54(b) because it does not finally resolve any claims or remove any parties from the action. *See Taylor Const. Co.*, 100 Nev. at 209,

678 P.2d at 1153. Although the district court determined that Superior owed LVPC a duty to defend, it did not determine the amount of damages due from any breach of that duty. Therefore, the order does not fully and finally resolve the claim of breach of contract based on the duty to defend. *See Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293, 593 P.2d 1068 (1979) (suggesting that an order that only determines liability but not damages is not certifiable under NRCP 54(b) because it does not completely resolve a claim). Regarding the claim for breach of contract based on the duty to indemnify, the district court concluded that because no decision has been made on LVPC's percentage of negligence or willful misconduct, any determination of indemnity is premature. Because the order does not make any determination regarding indemnity, it does not fully and finally resolve the claim for breach of contract based on the duty to indemnify.

Neither LVPC nor Superior asserts that any other statute or court rule permits an appeal from the challenged order. Nor does Superior assert any basis for jurisdiction over its appeal from the July 1, 2022, order. Accordingly, the parties fail to demonstrate that this court has jurisdiction, *see Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (“[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.”), and we

ORDER these appeals DISMISSED.



Herndon



Lee



Bell

cc: Hon. Jessica K. Peterson, District Judge
Eleissa C. Lavelle, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Resnick & Louis, P.C./Las Vegas
Clear Counsel Law Group
Springel & Fink, LLP
Lemons, Grundy & Eisenberg
Eighth District Court Clerk