

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BOGDANOVICH AND RUZA
BOGDANOVICH,
Appellants,
vs.
JUDY LU SHALLENBERGER, THE
JUDY LU SHALLENBERGER TRUST
DATED FEBRUARY 29, 1984 AND
ROCK ISLAND CORPORATION,
Respondents.

No. 39774

FILED

APR 24 2003

[Signature]
JANET H. HILL
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a partial summary judgment certified as final under NRCP 54(b) in a case involving an easement. When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellants to show cause why their appeal should not be dismissed. We were concerned that the district court had improvidently certified the partial summary judgment as final for two reasons. Appellants have responded to our show cause order, and respondents have filed a notice of non-opposition to appellants' response.

In our show cause order, we first noted that certification is available only if at least one claim for relief has been completely eliminated from the action.¹ Here, because the district court's partial summary judgment does not list any of the ten claims and counterclaims for elimination, it appeared unclear whether any claim for relief had been

¹NRCP 54(b).

entirely eliminated. We need not resolve this point, however, given that our second jurisdictional concern has not been allayed.

If the claims asserted in an action are so closely related that this court's resolution of certified issues would necessarily resolve claims pending below, then certification is an abuse of the district court's discretion.² The claims pleaded in this action all arise from a 1989 agreement regarding an easement. The district court concluded that the agreement created an easement solely for the use and benefit of two parcels of real property and prohibited alteration or expansion of the easement without respondents' consent.

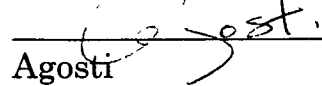
Our determination of the easement's parameters based on the agreement could resolve at least two claims remaining below that test the reach of the easement. For instance, respondent Judy Lu Shallenberger's breach of contract claim alleges that appellants breached the 1989 agreement by extending the easement beyond Shallenberger's northern boundary to the "Braun" parcel and by allowing others to utilize the easement. And appellants' third-party slander of title claim against respondent Rock Island Corporation alleges that Rock Island misinformed potential purchasers of the "Braun" parcel that it was not accessible by the easement. Appellants' conclusory statement that the easement issues are "entirely different" from the damages claims is not convincing.

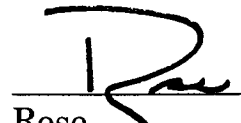
Because appellate review at this stage of the proceedings would create the law of the case for claims still pending below and result


²See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

in piecemeal litigation, NRCP 54(b) certification was an abuse of discretion.³

As we are without jurisdiction to consider this appeal, we
ORDER this appeal DISMISSED.

_____, C.J.
Agosti

_____, J.
Rose

_____, J.
Maupin

cc: Hon. Michael P. Gibbons, District Judge
Patrick O. King, Settlement Judge
Jeffrey K. Rahbeck
Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd.
Rowe & Hales
Douglas County Clerk

³See id. at 528, 728 P.2d at 443.