

IN THE SUPREME COURT OF THE STATE OF NEVADA

VACATION VILLAGE, INC.;
VVLV, LLC; AND
TURNBERRY/CENTRA SUB,
LLC, AS SUCCESSOR-IN-
INTEREST TO THE RIGHTS AND
CLAIMS OF VVLC, LLC,
Appellants,

vs.

COUNTY OF CLARK, A
POLITICAL SUBDIVISION OF
THE STATE OF NEVADA, AND
THE NEVADA DEPARTMENT OF
TRANSPORTATION,
Respondents.

No. 40131

FILED

DEC 13 2004

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from district court orders dismissing some of appellants' claims in a property dispute. Eighth Judicial District Court, Clark County; Jeffrey D. Sobel, Judge.

On April 17, 2002, the district court allowed appellant VVLV, LLC, to intervene in appellant Vacation Village, Inc.'s property dispute with respondents Clark County and Nevada Department of Transportation, simultaneously denying a motion to substitute the real party in interest. On May 6, 2002, the district court dismissed all of appellants' claims in the underlying matter but granted appellants leave

to file amended complaints.¹ However, the May 6 order was unclear as to (1) whether and to what extent the order applied to VVLV and/or Vacation Village and (2) whether appellants were allowed to file certain claims in their amended complaints, or whether those claims had actually been dismissed under NRCP 12(b)(5) for failure to state a claim. Consequently, Vacation Village moved for clarification or NRCP 54(b) certification as to the dismissal of its claims, and the district court subsequently entered various orders attempting to resolve the confusion. Those orders indicated that the May 6 order applied to both appellants, neither of which was to resubmit claims regarding the specific claims that had apparently been dismissed under NRCP 12(b)(5). The orders also purported to certify the dismissal of those claims as final under NRCP 54(b). Meanwhile, both appellants filed amended complaints, alleging at least some claims distinguishable from those that had been dismissed, and VVLV asserted a cross-claim against Vacation Village.

On August 26, 2002, appellants filed a joint notice of appeal, purportedly from a July 19, 2002 district court order entering findings of fact and conclusions of law regarding the dismissed claims and an August 2, 2002 district court clarification order. Thereafter, another notice of appeal was filed by VVLV, which additionally purported to appeal from an August 28 order denying a NRCP 52(b) motion for additional or amended findings. Finally, VVLV filed a third, amended, notice of appeal, adding the April 17 intervention order to the appealed order list.

¹Although appellant Turnberry/Centra Sub, LLC, apparently was not involved in this matter at the time this appeal was filed, it now appears as the successor-in-interest to VVLV's rights and claims and, therefore, is included in the dismissal of this appeal.

Appellants filed a joint docketing statement, and VVLV later filed a separate, but similar, docketing statement. Both docketing statements assert that all of the district court claims were dismissed, and that this court has jurisdiction over this appeal because the district court had dismissed “all claims,” and, therefore, had entered a final judgment in the matter. In the docketing statements, appellants also state that NRCP 54(b) certification was granted, but that the district court had not made, as required, an express determination that there is no just reason for delay and an express direction for the entry of judgment.² Respondents filed a response to the first docketing statement, asserting that the docketing statement is misleading, since the district court had not addressed appellants’ claims of first refusal rights as asserted in their amended complaints.

During this appeal’s pendency, Vacation Village and VVLV each filed separate notices of attorney substitutions. Vacation Village later, on August 5, 2004, filed a motion to determine jurisdiction and, if appropriate, to dismiss this appeal. In the motion, and without mentioning the “final order” jurisdictional assertion in the docketing statements, Vacation Village asserts that NRCP 54(b) certification of the reversionary claims was inappropriate because those claims are closely interrelated to claims pending below.³

Respondents and VVLV filed oppositions, asserting that certification was indeed appropriate because the claims are not closely related. Respondents additionally suggest that Vacation Village should be

²See Docketing Statement directive 25 (c) and (d).

³See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

sanctioned for its conduct related to this appeal, including providing inaccurate and incomplete information to this court and attempting to manipulate the appellate process to gain an advantage in the litigation, primarily by seeking NRCP 54(b) certification, appealing, and then attempting to dismiss the appeal, nearly two years later, based on the impropriety of NRCP 54(b) certification.

Finally, with leave of this court, Vacation Village filed a reply. In it, Vacation Village attempts to explain its conduct by noting the confusing nature of the district court orders and proceedings, and the differing views of its current and former counsel. It further asserts that this appeal was not filed as a manipulative tactic, but rather because an appeal had, at the time and to former counsel, appeared appropriate. Further, Vacation Village argues, it had in good faith attempted to “mediate” the case through this court’s settlement program, and, when that failed, it is now attempting to correct any procedural deficiencies by bringing apparent problems with the appeal to this court’s attention.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.⁴ NRAP 3A(b)(1) authorizes an appeal from a district court’s final written judgment adjudicating all the rights and liabilities of all the parties.⁵ In addition, an appeal may be taken from a written judgment that completely removes a party or a claim

⁴Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

⁵Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

and is properly certified as final under NRCP 54(b).⁶ NRCP 54(b) certification must include the district court's "express determination that there is no just reason for delay," and "express direction for the entry of judgment."⁷ Finally, an order denying a motion to amend findings of fact and conclusions of law, or denying a motion for substitution but granting intervention, is not independently appealable.⁸

In the various papers submitted to this court, all parties concede that the district court orders, at some point, clarified that only certain claims were dismissed. Consequently, the amended complaints' remaining claims (and, apparently, the cross-claim) currently remain pending in the district court, and the district court has not yet entered a final judgment in this matter.

Further, although the parties spend much time arguing over whether NRCP 54(b) certification of the reversionary claims was appropriate, it appears that none of the purported NRCP 54(b) certifications was proper. Specifically, despite VVLV's assertion that the district court complied with the express determination and direction requirements of NRCP 54(b),⁹ neither the June 5, 2002 order referred to, nor any other district court order, includes the district court's "express

⁶See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 610, 797 P.2d 978, 981 (1990).

⁷NRCP 54(b); Aldabe v. Evans, 83 Nev. 135, 425 P.2d 598 (1967).

⁸NRAP 3A(b); Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995); Jensen v. Nielson, 91 Nev. 412, 537 P.2d 321 (1975).

⁹See VVLV's Joinder in Resp'ts Opposition, pp. 2-3, 4.

determination that there is no just reason for delay,” or express direction for the entry of judgment. Moreover, it appears that the claims asserted in the amended complaints, currently pending in the district court, are so closely related with the dismissed claims that NRCP 54(b) certification might not be appropriate.¹⁰ Accordingly, this court lacks jurisdiction, and we dismiss this appeal.¹¹

In addition, we note that, as indicated under the warning provided on the first page of the docketing statement, “when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate.”¹² In this appeal, statements made by both appellants in the docketing statements and elsewhere, as pointed out above, have not been entirely accurate or devoid of misleading information. However, we recognize that many of these problems and the instigation of this jurisdictionally deficient appeal stemmed, at least in part, from the vagueness of the district court’s written orders. Although we decline respondents’ invitation to impose dismissal or cost sanctions at this time, we remind counsel of their obligation to provide this court with complete and accurate information in the docketing statement and all other papers submitted to this court, and caution counsel that any misleading


¹⁰See Hallicrafters, 102 Nev. 526, 728 P.2d 441.


¹¹We note that, for reasons next discussed, this dismissal does not affect any party’s right to appeal following a final judgment in the district court. Hallicrafters, 102 Nev. 526, 728 P.2d 441.

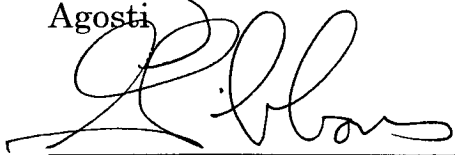
¹²See also Moran v. Bonneville Square Assocs., 117 Nev. 525, 25 P.3d 898 (2001); KDI Sylvan Pools, 107 Nev. at 340, 810 P.2d at 1220.

information in future submittals may result in the imposition of sanctions.¹³

It is so ORDERED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 5, District Judge
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Las Vegas
Clark County District Attorney David J. Roger/Civil Division
Gordon & Silver, Ltd.
John Peter Lee Ltd.
Snell & Wilmer, LLP
Clark County Clerk

¹³See NRAP 38(b), Moran, 117 Nev. at 531, 25 P.3d at 901; KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220.