

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
DETERMINATION OF THE RELATIVE
RIGHTS IN AND TO THE WATERS OF
MOTT CREEK, TAYLOR CREEK, CARY
CREEK (A/K/A CAREY CREEK),
MONUMENT CREEK, AND BULLS
CANYON, STUTLER CREEK (A/K/A
STATTLER CREEK), SHERIDAN
CREEK, GANSBERG SPRING, SHARPE
SPRING, WHEELER CREEK NO. 1,
WHEELER CREEK NO. 2, MILLER
CREEK, BEERS SPRING, LUTHER
CREEK AND VARIOUS UNNAMED
SOURCES IN CARSON VALLEY,
DOUGLAS COUNTY, NEVADA,

J.W. BENTLEY AND MARYANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST,
Appellants,

vs.

THE STATE OF NEVADA, OFFICE OF
THE STATE ENGINEER; HALL
RANCHES, LLC; SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; FRANK SCHARO;
RONALD R. MITCHELL; GINGER G.
MITCHELL; THOMAS J. SCYPHERS;
DONALD S. FORRESTER; AND
KRISTINA M. FORRESTER,
Respondents.

No. 60891

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court order, purportedly certified as final under NRCP 54(b), resolving certain exceptions to a final order of determination in a water rights case. Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, it is unclear whether the judgment or order designated in the notice of appeal is substantively appealable. See NRAP 3A(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (explaining that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

Based on the district court docket entries and appellants' docketing statement, it appears that the district court divided the action pending below into subproceedings in order to facilitate resolution of the various exceptions to the final order of determination. In the challenged order, the district court resolved one of those subproceedings, but the remaining subproceedings appear to remain pending, and thus, it does not appear that a final judgment has been entered in the district court. See NRAP 3A(b)(1) (providing for an appeal from a final judgment in an action or proceeding); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (explaining that a final judgment is one that disposes of all issues presented in the case, leaving nothing for the future consideration of the district court, except for post-judgment issues such as attorney fees and costs).

In the challenged order, the district court purportedly certified the judgment as final pursuant to NRCP 54(b), finding that there was no just reason for delay and stating that it was therefore entering a final

judgment “upon Exception No. 1.” Since the 2004 amendment to NRCP 54(b), effective January 1, 2005, however, orders that remove claims are no longer amenable to certification. And although NRCP 54(b) permits the district court to enter a final judgment as to fewer than all parties to an action, it is not clear from the documents submitted to this court whether any party to this appeal has been completely removed from the pending district court case. See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990). In particular, the district court did not certify its judgment as final with regard to any of the individual parties, and the submitted documents do not clearly establish that the parties to this appeal are not involved in any of the subproceedings that remain pending in the district court.

Accordingly, appellants shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that establishes this court’s jurisdiction including, but not necessarily limited to, points and authorities clarifying whether appellants or respondents have been completely removed from the proceeding below by the certified order. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court’s dismissal of this appeal. Respondents may file any reply within ten days from the date that appellants’ response is served. We suspend the briefing schedule in this appeal pending further order of this court.

It is so ORDERED.

Cherry, C.J.

cc: Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty
Matuska Law Offices, Ltd.
Thomas J. Hall
Attorney General/Carson City