

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY SCHMIDT,
Appellant,
vs.
BEN KIECKHEFER,
Respondent.

No. 66528

FILED

FEB 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART

In this appeal, appellant challenges a June 2014 district court temporary restraining order and a September 2014 order denying a special motion to dismiss under Nevada's anti-SLAPP provisions. Because temporary restraining orders generally are not appealable, *Sicor, Inc. v. Sacks*, 127 Nev. ___, 266 P.3d 618, 620 (2011); *Sugarman Iron & Metal Co. v. Morse Bros. Mach. & Supply Co.*, 50 Nev. 191, 255 P. 1010 (1927), we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction as to the June order.¹ Both parties timely responded.


Temporary restraining orders generally are not appealable, even in the context of a proper appeal from another judgment, because they are of limited duration and do not finally resolve the injunction question. *Sicor*, 127 Nev. at ___, 266 P.3d at 620; see 16 Charles Alan Wright, Arthur R. Miller & Edwards H. Cooper, Federal Practice and


¹Our show cause order noted that the September order denying the special motion to dismiss is independently appealable under NRS 41.670(4).

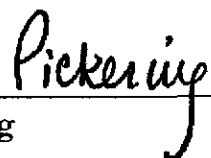
Procedure § 3922.1 (3d ed. 2012). Here, a hearing on respondent's motion for a preliminary injunction was scheduled for 12 days after the temporary restraining order issued, and the order was not extended beyond the NRCP 65(b) timeframe. Moreover, the reasons for the order—pre-primary election advertising activity—became moot when the primary election took place just a few days after the temporary restraining order was issued. Consequently, the reasons for the general rule of non-appealability operate here, and appellant has not argued that any exception to the general rule applies. *See, e.g., Wright, Miller & Cooper, § 3922.1* (explaining that some jurisdictions have allowed appeals from temporary restraining orders when the order functions as a preliminary injunction, has disastrous consequences, or creates a need for an immediate appeal that overcomes the reasons for the general rule of non-appealability). Accordingly, we lack jurisdiction and dismiss this appeal as to the June temporary restraining order, only.

Respondent has filed a motion for an extension of time to file the answering brief, which is currently due by February 26, 2015. The motion is granted; respondent shall have 30 days from the date of this order to file and serve his answering brief.

It is so ORDERED.


Saitta, J.


Gibbons, J.


Pickering, J.

cc: Hon. Jerome Polaha, District Judge
Charles R. Kozak
McDonald Carano Wilson LLP/Las Vegas
McDonald Carano Wilson LLP/Reno
Washoe District Court Clerk