

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED AWERBACH, INDIVIDUALLY,  
Appellant/Cross-Respondent,  
vs.  
EMILIA GARCIA,  
Respondent/Cross-Appellant,  
and  
ANDREA AWERBACH,  
INDIVIDUALLY,  
Respondent.

No. 71348

**FILED**

JUL 30 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DISMISSING APPEAL,  
DISMISSING CROSS-APPEAL IN PART,  
AND REINSTATING BRIEFING*

This is an appeal and cross-appeal from various district court orders, including orders granting a new trial as to one of two defendants and certifying as final the judgment in favor of the other defendant.

Respondent/cross-appellant Emilia Garcia sued appellant/cross-respondent Jared Awerbach and respondent Andrea Awerbach, asserting personal injury claims after a motor vehicle accident. The jury returned a verdict in favor of Andrea but against Jared on March 10, 2016. Both Emilia and Jared moved for a new trial. On August 12, 2016, the district court granted Emilia's motion and ordered a new trial on all issues. Thereafter, on August 18, 2017, the district court entered a judgment on the jury verdict, but then three days later, on August 21, 2017, the court vacated the judgment as to Jared pursuant to the August 12 order granting a new trial. The August 21 order also certified the remaining part of the August 18 judgment, on the defense verdict as to Andrea, as final under NRCP 54(b), and denied as moot Jared's motion for a new trial.

Jared filed a notice of appeal from the August 12 order granting a new trial, the August 18 judgment, and the August 21 order vacating the judgment as to him and denying his new trial motion, and Emilia filed a notice of appeal from those same orders and some interlocutory rulings as well. Now before this court are the parties' timely responses to our second order to show cause why this appeal and cross-appeal should not be dismissed for lack of jurisdiction.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *See Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 678 P.2d 1152 (1984). Under NRAP 3A(a) and NRAP 3A(b)(1) and (2), an aggrieved party may appeal from the final judgment and from an order granting or denying a new trial. Parties are aggrieved when the appealed order adversely affects either a personal right or right of property. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994); *see also Ford v. Showboat Operating Co.*, 110 Nev. 752, 877 P.2d 752 (1994) ("A party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved by the judgment."). Here, however, as noted in Emilia's response, the only existing judgment from which an appeal may be taken is the August 18 judgment in favor of Andrea, which was certified as final by the district court under NRCP 54(b) on August 21. Thus, Emilia's cross-appeal may proceed as to that judgment and, to the extent necessary to afford complete review, any interlocutory orders affecting that judgment.

And although the district court denied Jared's motion for a new trial, it did so because it determined that the motion was moot, as it had already granted the requested new trial. Even though Jared will receive a new trial on all issues, he now seeks to challenge the grounds upon which

the new trial was granted. But a party may only appeal from an appealable judgment by which he is aggrieved, not from a finding of fact or a conclusion of law. *Showboat Operating*, 110 Nev. at 756, 877 P.2d at 549. As a new trial was granted, Jared on appeal is not trying to alter any rights arising from the judgment or the new trial order, but to base the grant of a new trial on different grounds. Since, ultimately, a new trial was granted on all issues, Jared is not aggrieved by the order denying his motion for a new trial, and we therefore dismiss his appeal. Likewise, as no final judgment as to Jared has been entered and Emilia is not aggrieved by the order granting her motion for a new trial, we dismiss the cross-appeal to the extent Emilia challenges the orders related to Jared.

In light of this order, the clerk of this court shall modify the caption to reflect that Emilia is the appellant and Andrea is the respondent to this appeal. We hereby reinstate the briefing schedule as follows. Emilia shall have 60 days from the date of this order to file and serve her opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

Pickering, J.  
Pickering

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

cc: Hon. Jerry A. Wiese, District Judge  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Resnick & Louis, P.C.  
Mazzeo Law LLC  
Glen J. Lerner & Associates  
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
Eighth District Court Clerk