

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAVIN COX; AND MIHN-HAHN COX,  
HUSBAND AND WIFE,

Appellants/Cross-Respondents,

vs.

DAVID COPPERFIELD, A/K/A DAVID  
S. KOTKIN,

Respondent/Cross-Appellant,

vs.

MGM GRAND HOTEL, LLC;  
BACKSTAGE EMPLOYMENT AND  
REFERRAL, INC.; DAVID  
COPPERFIELD'S DISAPPEARING,  
INC.; TEAM CONSTRUCTION  
MANAGEMENT, INC.; AND  
BEACHERS LV, LLC,

Respondents.

No. 76422

**FILED**

**AUG 29 2019**

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

*ORDER TO SHOW CAUSE*

This is an appeal from a jury verdict dismissing the complaint. Respondent/cross-appellant has filed a notice of cross-appeal proposing to challenge several interlocutory orders. Preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals potential jurisdictional defects in the notice of cross-appeal.

Appellants/cross-respondents filed a complaint against respondents and respondent/cross-appellant for personal injuries. Respondent/cross-appellant David Copperfield and respondents David Copperfield's Disappearing, Inc., and MGM Grand Hotel, LLC, crossclaimed against appellants for contribution and indemnity. MGM Grand also filed a third party complaint against respondent Beachers LV,

LLC, for indemnity and contribution and allocation and Beachers counterclaimed against MGM Grand for identical claims. The cross-claims and third-party claims were stayed pending the trial on liability. The jury found appellants 100% responsible for their injuries and no liability on the part of any of the defendants. The jury verdict rendered the crossclaims and third party claims moot, and all claims against all parties were finally resolved by the judgment. *Lee v. GNLV, Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that finally resolves all claims and issues against all parties to an action and leaves nothing to the district court's consideration except postjudgment issues such as attorney fees and costs). Judgment was entered on the jury's verdict on June 20, 2018, finding against the plaintiffs and appellants and in favor of each of the defendants and respondents.

Appellants timely filed their notice of appeal on July 1, 2018. An amended notice of appeal was filed November 26, 2018, after the district court denied appellants' motion for new trial. *See* NRAP 4(a). Respondent/cross-appellant filed his notice of cross-appeal on May 22, 2019, 10 months after the appeal was docketed in this court. Appellants/cross-respondents and respondents have filed their opening and answering briefs. Respondent/cross-appellant filed a combined answering brief on appeal and opening brief on cross-appeal on August 12, 2019.

First, the notice of cross-appeal appears to be untimely filed under NRAP 4(a)(2) because it was filed well over 14 days after the original notice of appeal. *See* NRAP 26(c).

Second, the order purporting to certify the judgment as final pursuant to NRCP 54(b) appears to be improper because a final judgment had already been entered on June 20, 2018. There can be only one final

judgment in a case. *Alper v. Posin*, 77 Nev. 328, 363 P.2d 502 (1961), *overruled on other grounds by Lee*, 116 Nev. at 426, 996 P.2d at 417. The certification does not create a new finality from which a party can appeal.

Third, it is unclear how respondent/cross-appellant is aggrieved by the judgment. Under NRAP 3A(a), only "aggrieved parties" may appeal. "A party is 'aggrieved' within the meaning of NRAP 3A(a) 'when either a personal right or right of property is adversely and substantially affected' by a district court's ruling." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994); (quoting *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)). A party is aggrieved by an order only if it "will be directly benefited by its reversal." *Leonard v. Belanger et al.*, 67 Nev. 577, 593, 222 P.2d 193, 200 (1950) (quoting *Gibbons v. Cannaven*, 66 N.E.2d 370, 377 (Ill. 1946)). Respondent/cross-appellant proposes that "[t]his cross-appeal is offered in case this Court reverses the judgment arising out of the jury's verdict, and orders a new trial." This is an improper basis for a cross-appeal. Instead, "it is [ ] settled that the appellee may, *without taking a cross appeal*, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it." *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (emphasis added).

Accordingly, respondent/cross-appellant shall have 30 days from the date of this order within which to show cause why this cross-appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this cross-appeal. The briefing schedule in this appeal and cross-appeal shall be suspended pending further order of this court. Appellants/cross-

respondents may file any reply within 14 days from the date that respondent/cross-appellant's response is served.

It is so ORDERED.<sup>1</sup>

 C.J.

cc: Morelli Law Firm PLLC  
Harris & Harris  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
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<sup>1</sup>This court takes no action in regard to the stipulation filed on August 12, 2019. Respondent/cross-appellant David Copperfield and respondents MGM Grand Hotel; Backstage Employment and Referral; and David Copperfield's Disappearing, Inc. filed their briefs and appendix on August 12, 2019. The motion for extension of time filed by respondents Team Construction Management and Beachers LV is denied as moot.