

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES TAYLOR; NEVADA GAMING
CONTROL BOARD; AND AMERICAN
GAMING ASSOCIATION,

Appellants/Cross-Respondents,

vs.

DR. NICHOLAS G. COLON,

Respondent/Cross-Appellant.

No. 78517

FILED

SEP 06 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 12
DEPUTY CLERK

ORDER DISMISSING CROSS-APPEAL

This is an appeal and cross-appeal from a district court order denying a special motion to dismiss. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Review of the docketing statement filed by respondent/cross-appellant (respondent) revealed a potential jurisdictional defect. It appeared that respondent may not have been aggrieved by the challenged order because he prevailed in the district court when the district court denied appellant/cross-respondent's special motion to dismiss. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (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."). Although respondent asserted that he appealed from the portion of the order denying his contention that NRS 41.635 et seq. was unconstitutional, no appeal may be taken from a court's conclusion of law. *Id.* Accordingly, this court ordered respondent to show cause why this cross-appeal should not be dismissed for lack of jurisdiction.

In response, respondent contends that he is aggrieved because the district court's order denied him the relief he was seeking: to prosecute his claims without being subject to Nevada's allegedly unconstitutional

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anti-SLAPP statute. Respondent argues that he seeks to alter the rights of appellants/cross-respondents under the judgment because should he successfully argue to this court that NRS 41.635 et seq. is unconstitutional, appellants/cross-respondents will not be able to proceed under those statutes in either this court or the district court. Respondent also asserts that he is aggrieved because he is forced to present an analysis of the statute to this court that he would not have had to present if the district court had ruled in his favor. Moreover, should appellants/cross-respondents prevail on appeal, and this court not determine the constitutionality of the statute, respondent will suffer a dismissal under an unconstitutional statute.

Respondent must appeal from an order or judgment by which he is aggrieved. *See id.*; NRAP 3A(b). As a result of the order denying the special motion to dismiss, respondent's lawsuit was permitted to proceed. Respondent does not seek to alter this result. Nor is respondent aggrieved by the district court's order allowing his suit to proceed. *See Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) ("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."). Thus, respondent may not appeal from the order denying the special motion to dismiss. While the district court made a conclusion of law rejecting respondent's contention that the statute was unconstitutional, respondent may not appeal from this conclusion of law. *See Ford*, 110 Nev. at 756, 877 P.2d at 549, ("[N]o court rule or statute provides for an appeal from a finding of fact or from a conclusion of law."); *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (this court "may only consider appeals authorized by statute or court rule"). Accordingly, this court orders the cross-appeal dismissed. *See NRAP*

3A(a) (allowing an appeal by a party who is aggrieved by a *judgment*); *Ford*, 110 Nev. at 756, 877 P.2d at 549. Respondent may raise any arguments in support of the district court's order, including a challenge to the constitutionality of NRS 41.635 et seq., in the answering brief.¹ See *Ford* 110 Nev. at 756-57, 877 P.2d at 549.

Briefing of this appeal is reinstated. Appellants shall have 60 days from the date of this order to file and serve their opening briefs. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). Failure to timely file briefs in this matter may result in the imposition of sanctions. NRAP 31(d).

It is so ORDERED.

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Stephen E. Haberfeld, Settlement Judge
Attorney General/Carson City
Attorney General/Las Vegas
McDonald Carano LLP/Las Vegas
Nersesian & Sankiewicz
Eighth District Court Clerk

¹After the filing of the reply brief, respondent may file a motion for leave to file a sur-reply, if deemed warranted.