

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ROY HOLMES,

Appellant,

vs.

CAPUCINE YOLANDA HOLMES,

Respondent.

Electronically Filed
Supreme Court No. 79976
Nov 13 2019 04:59 p.m.
Elizabeth A. Brown
District Court Case No. D-15-523582-D
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Rena G. Hughes, District Judge

MOTION TO DISMISS APPEAL

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COMES NOW Respondent CAPUCINE YOLANDA HOLMES (“Capucine”) , by and through her attorneys of record, the law firm of Heaton Fontano, Ltd., and moves the Court for entry of an order dismissing the Appeal filed by Appellant WILBERT ROY HOLMES (“Wilbert”).

This Motion is brought pursuant to rules 27 and 3A of the Nevada Rules of Appellate Procedure, and is made and based upon grounds that there is no legal or factual basis for an appeal, and the court lacks jurisdiction to consider an appeal. Said Motion is further made and based upon the pleadings and papers on file herein, upon the points and authorities that are appended hereto and filed herewith, and upon such other and further pleadings, points and authorities, affidavits, and evidence as may hereinafter be presented for the Court's consideration.

DATED this 14th day of November 2012.

HEATON FONTANO, LTD.



JAMES A. FONTANO
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I.

POINTS AND AUTHORITIES

A. Procedural and Factual History

This matter came on for a trial before the district court on January 10 and 18, 2017. On or about June 1, 2017, the district court entered its Decree of Divorce. Wilbert appealed the district court's decision, which appeal was docketed as case no.: 73291. On April 13, 2018, the Court of

Appeals entered its *Order Affirming in Part, Reversing in Part, and Remanding* in Docket 73291.

Following remand, the district court made clerical corrections to the Decree as instructed by the Court of Appeals, and Wilbert again appealed, which appeal was docketed as case no.: 76206. On April 26, 2019, the Court of Appeals entered an *Order of Affirmance* in Docket 76206, pursuant to which it affirmed in whole the district court's decision. Wilbert petitioned the Supreme Court for review, and on July 5, 2019, that request was denied. The matter was remitted to the district court on August 13, 2019.

On September 25, 2019, Wilbert filed a Motion for Rehearing in the district court, pursuant to which he asked the court to rehear the divorce proceedings and revise its decree. The matter was heard on October 29, 2019, at which time the court found there was no legal or factual basis for the motion. Wilbert filed a Notice of Appeal the following day, before a written order was entered.

B. There is No Legal Basis for an Appeal in this Matter.

“The Supreme Court of Nevada is the final arbiter of Nevada state law, and if it rules adversely to [a] petitioner..., that is the end of that matter.” *Gaines v. Neven*, 2:10-cv-01367 (D. Nev., April 1, 2014). The district court had no authority to rehear a matter that this Court had ruled upon and affirmed. The appeal is effectively Wilbert asking the Nevada Supreme Court to reverse the district court's decision not to

reverse the Nevada Supreme Court's prior decision. It is nonsensical, improper, and a patent waste of judicial resources.

The Nevada Court of Appeals has twice affirmed the district court's Decree of Divorce, this Court has declined to rehear Wilbert's appeal, and "that is the end of the matter." *Gaines, supra*. Capucine is entitled to finality in the divorce proceedings, and the appeal must therefore be dismissed.

C. There Is No Judgment or Order that Constitutes an Appealable Determination, and This Court Accordingly Lacks Jurisdiction to Consider an Appeal.

"NRAP 3A(b) designates the judgments and orders from which an appeal may be taken, and where no statutory authority to appeal is granted, no right exists." *Taylor Const. Co. v. Hilton Hotels Corp.*, 678 P.2d 1152, 1153, 100 Nev. 207, 209 (1984). Appealable determinations, as detailed in NRAP 3A(b), include the following:

- (1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.
- (2) An order granting or denying a motion for a new trial.
- (3) An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.
- (4) An order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver.
- (5) An order dissolving or refusing to dissolve an attachment.
- (6) An order changing or refusing to change the place of trial only when a notice of appeal from the order is filed within 30 days....

(7) An order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children.

(8) A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment.

(9) An interlocutory judgment, order or decree in an action to redeem real or personal property from a mortgage or lien that determines the right to redeem and directs an accounting.

(10) An interlocutory judgment in an action for partition that determines the rights and interests of the respective parties and directs a partition, sale or division.

NRAP 3A(b). Wilbert’s appeal is of the district court’s decision denying his Motion for Rehearing. Nothing in NRAP 3A(b) suggests that a denial of a motion for rehearing constitutes an appealable determination.¹

Additionally, Wilbert’s prior appeals, in Docket nos. 73291 and 76206 *were* appeals of the final judgment in this matter.² Appellant has already appealed the final judgment in this matter—twice—and was denied on both occasions. Because there is no appealable determination

¹ Wilbert may contend that his Motion for Rehearing was a motion for new trial under subsection (b)(2); however, a “motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.” NRCP 59(b). In this case, notice of entry of the Decree of Divorce was served on June 9, 2017, meaning that a motion for new trial would have to have been made on or before July 7, 2017.

² Docket 73291 appealed the original Decree of Divorce entered by the district court on June 1, 2017. Docket 76206 appealed the district court’s subsequent revision to the Decree as instructed by the Court of Appeals in its *Order Affirming in Part, Reversing in Part, and Remanding in* Docket 73291.

from which the instant appeal may be made, this Court lacks jurisdiction to consider the appeal, and it must be dismissed.

II.

CONCLUSION

Because the Appellant has twice appealed the Decree of Divorce, and on both occasions had his appeal denied, there is no legal or factual basis upon which an appeal should be permitted. Further, there is no appealable determination from which Appellant may seek this Court's intervention. Accordingly, Respondent Capucine Yolanda Holmes respectfully requests that the Appeal in this matter be dismissed.

DATED this 14th day of November 2012.

HEATON FONTANO, LTD.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing MOTION TO DISMISS APPEAL was mailed to the following via U.S. Mail, postage-prepaid on this 14th day of November 2012.

Wilbert R. Holmes
240 E Silverado Ranch Blvd
Las Vegas NV 89183

By:



An Employee of Heaton Fontano, Ltd.