

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON,

Appellant,

vs.

RAMPARTS INC., LUXOR HOTEL &
CASINO, A DOMESTIC
CORPORATION,

Respondent.

Case Nos.: 78964/80167

Electronically Filed
Dec 24 2019 09:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable David M. Jones
Presiding

MOTION TO WAIVE FILING FEE AND COMBINE CASES

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MAC:15877-001 3923054_1

Plaintiff/Appellant, Vivia Harrison (“Plaintiff”), filed an amended notice of appeal in the District Court on December 3, 2019, which was docketed in this Court as Case No. 80167. As Plaintiff has explained in her concurrently-filed response to this Court’s order to show cause in Case No. 78964, the amended notice of appeal cures the jurisdictional defect in Case No. 78964.¹ In other words, the original notice of appeal was premature.

Based upon the operation of NRAP 4(a)(6), this Court should reach the conclusion that Plaintiff’s amended notice of appeal, in fact, cured the jurisdictional defect in Case No. 78964. And, the Court should also waive the filing fee for Case No. 80167 according to NRAP 4(a)(7) since Plaintiff’s amended notice of appeal should have been docketed in Case No. 78964.

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¹ A copy of Plaintiff’s response to order to show cause (without exhibits) is attached as **Exhibit 1**.

As such, Plaintiff moves this Court to combine the two appeals, waive the filing fee for Case No. 80167, and reinstate briefing. *See* NRAP 3(b)(2).

Dated this 24th day of December, 2019.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO WAIVE FILING FEE AND COMBINE CASES** was filed electronically with the Nevada Supreme Court on the 24th day of December, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Loren Young, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIA HARRISON,

Appellant,

vs.

RAMPARTS INC., LUXOR HOTEL &
CASINO, A DOMESTIC
CORPORATION,

Respondent.

Case No.: 78964 Electronically Filed
Dec 24 2019 09:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable David M. Jones
Presiding

RESPONSE TO THE COURT'S NOVEMBER 14, 2019
ORDER TO SHOW CAUSE

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MAC:15877-001 3923047_1

I. INTRODUCTION

On November 14, 2019, this Court issued an order to show cause regarding the Court's appellate jurisdiction. The Court's order essentially asks Plaintiff to demonstrate how this Court has jurisdiction over this appeal. The focused question in the Court's order asks how Plaintiff's appeal from an order denying reconsideration confers appellate jurisdiction. The Court's order, however, presumes that a final judgment was previously entered, such that the post-trial proceedings were all done following the entry of a final, appealable judgment. After investigating the resolution of all claims made by or against all parties, to determine finality, Plaintiff discovered that an order dismissing Desert Medical was never entered. Plaintiff recently procured an order dismissing Desert Medical and filed an amended notice of appeal from the final, appealable order.¹ Thus, this Court should determine that it has appellate jurisdiction over this appeal and reinstate briefing.

¹ The amended notice of appeal was separately docketed as Case No. 80167. Plaintiff has filed a motion in that case concurrently with this response to combine the two proceedings and waive the filing fee for the new appeal according to NRAP 4(a)(7).

II. LEGAL ARGUMENT

A. NO FINAL, APPEALABLE JUDGMENT WAS ENTERED PRIOR TO THE RECENT DISMISSAL OF DESERT MEDICAL.

In her second amended complaint, filed on August 19, 2016, Plaintiff alleged causes of action for (1) negligence; and (2) negligent hiring, training, maintenance, and supervision against Defendant Luxor Hotel & Casino (“Luxor”); (3) negligence; and (4) negligent hiring, training, maintenance and supervision against Defendant Desert Medical Equipment (“Desert Medical”); and (5) negligence; and (6) strict products liability against Defendant Pride Mobility Products Corp. (“Pride Mobility”). *See Exhibit 1.* Plaintiff stipulated with Luxor to remove the second cause of action for negligent hiring, training, maintenance, and supervision. *See Exhibit 2.*

Pride Mobility filed a third-party complaint against Third-Party Defendant Stan Sawamoto (“Sawamoto”). *See Exhibit 3.* Pride Mobility stipulated to the dismissal of its claims against Sawamoto prior to trial. *See Exhibit 4.* At a hearing in August 2018, Pride Mobility had its motion for summary judgment granted, and the order granting summary judgment was filed on January 29, 2019. *See Exhibit 5.*

In December 2018, a nine-day trial took place. Prior to the jury’s verdict, Plaintiff and Desert Medical entered into a high-low settlement agreement.

Pursuant to the settlement agreement, no matter what the jury's verdict was, Desert Medical would be obligated to pay Plaintiff according to the terms of the high-low settlement agreement. A contract was entered into between the two parties, and the payment was not part of a net judgment. The settlement amount was not confidential.

On December 20, 2018, the jury returned a verdict in favor of Luxor and Desert Medical. *See Exhibit 6.* In light of the defense verdict, Desert Medical was required to pay Plaintiff \$150,000 according to the high-low agreement. Plaintiff's counsel sent a notice of attorney lien to all parties on December 20, 2018 and January 8, 2019.

On January 17, 2019, Luxor filed a motion for attorney fees and costs, which was granted in the March 18, 2019 order granting Luxor's motion for attorney's fees and costs. *See Exhibit 7.* In the March 18, 2019 order, the District Court ordered that the judgment against Plaintiff must be offset from other settlement funds received by Plaintiff prior to any satisfaction of liens, including the lien for attorney fees and costs incurred by Plaintiff's counsel during the course of litigation. *Id.*

On March 28, 2019, Plaintiff filed a motion for reconsideration, asking the District Court to reconsider the attorney lien offset. *See Exhibit 8.* On May 10, 2019, the District Court issued a minute order denying Plaintiff's motion for

reconsideration. A written order denying reconsideration was entered on May 21, 2019. *See Exhibit 9.*

Desert Medical filed a motion for interpleader and to deposit the funds with the District Court, which was granted on July 24, 2019.

Following the order denying reconsideration, Plaintiff filed her original notice of appeal on June 4, 2019, which was docketed in this Court as Case No. 78964. Plaintiff intended to appeal from the award of attorney's fees and costs, but only named the motion for reconsideration in her notice of appeal. However, this Court has previously held that a notice of appeal that does not identify the correct judgment or order does not warrant dismissal where "the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice and where the defect has not materially misled the respondent." *Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 90, 624 P.2d 496, 497 (1981).

Plaintiff's intent to appeal from the award of fees and costs can be reasonably inferred based on naming the denied reconsideration motion. *See Ross v. Giacomo*, 97 Nev. 550, 555, 635 P.2d 298, 301 (1981) (providing that an appeal from the denial of a post-judgment tolling motion may be viewed as an appeal from the final judgment), *abrogated on other grounds by Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006).

However, a final order disposing of all claims had not yet been entered, making Plaintiff's original notice of appeal premature. Plaintiff and Desert Medical entered into a stipulation and order for dismissal, which was filed on November 26, 2019. *See Exhibit 10*. This final order cures the jurisdictional defect in Plaintiff's original notice of appeal, and she filed an amended notice of appeal to include (1) the order granting Defendant Ramparts, Inc. dba Luxor Hotel & Casino's motion for attorney's fees and costs, which was filed on March 18, 2019 (**Exhibit 7**); (2) the order denying Plaintiff's motion to reconsider the Court's order granting Luxor an attorney lien offset, which was filed on May 21, 2019 (**Exhibit 9**); and (3) the stipulation and order to dismiss Defendant Desert Medical Equipment, only, which was filed on November 26, 2019 (**Exhibit 10**).

Notably, this Court has previously confirmed the use of a stipulation to resolve outstanding claims by written order, even after the entry of a judgment on the jury's verdict. *See Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 732 n.4, 192 P.3d 243, 248 n.4 (2008) ("Since the Thitcheners' NIED and negligence per se claims were formally resolved by a written stipulation and order of dismissal entered after the district court amended its judgment upon the jury verdicts, that order constitutes the final appealable judgment in this case.") (citations omitted). Therefore, the Court should determine that the final, appealable order was the stipulation that dismissed Plaintiff's claims against Desert

Medical. And, the Court should further determine that Plaintiff timely filed her amended notice of appeal (**Exhibit 11**).

B. PLAINTIFF’S APPEAL FROM THE FINAL, APPEALABLE ORDER ALLOWS THIS COURT TO REVIEW ALL CHALLENGED INTERLOCUTORY ORDERS.

Once this Court determines that it has appellate jurisdiction over this appeal, the next question that arises is whether the Court can review all the challenged interlocutory orders. Since the stipulation and order dismissing Plaintiff’s claims against Desert Medical is the final, appealable order, the Court will review any challenged, interlocutory orders within this appeal, including all the orders named in Plaintiff’s amended notice of appeal. *See Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (“Although these orders are not independently appealable, since CGN is appealing from a final judgment the interlocutory orders entered prior to the final judgment may properly be heard by this court.”). Therefore, Plaintiff urges this Court to also determine that it has the authority to review all the challenged, interlocutory orders outlined in Plaintiff’s amended notice of appeal.

III. CONCLUSION

In summary, the Court should determine that there was no final, appealable judgment until the recent entry of the stipulation and order dismissing Plaintiff’s claims against Desert Medical. In any event, according to *Collins*, the Court can

infer that Plaintiff's appeal from the order denying her motion for reconsideration actually challenges the underlying appealable fees order. Finally, upon determining that Plaintiff's appeal from the stipulation and order confers appellate jurisdiction, this Court should also determine that all the challenged, interlocutory orders are properly reviewable in this appeal.

Dated this 24th day of December, 2019.

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/s/ Leah Dell

Leah Dell, an employee of
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