

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL D.S. EDWARDS,

Appellant,

vs.

TIMESHARE LIQUIDATORS, LLC, a/d/b/a TLC RESORT LIQUIDATORS, a/d/b/a TLC RESORTS VACATION CLUB, LLC, a/d/b/a TLC RESORTS VACATION CLUB, a/d/b/a TLC RESORTS, a/k/a TLCRESORTS.COM, a/d/b/a TLC TRAVEL, a/k/a TLC, a/d/b/a VIP TRAVEL, a/d/b/a VIP VACATIONS, a/d/b/a VIP INTERNATIONAL, and PLAZA HOTEL & CASINO, LLC, a/d/b/a PLAZA HOTEL & CASINO, and CASH4ASKING, LLC, a/d/b/a CASH4ASKING.COM, and STANLEY C. MULLIS, a/k/a STANLEY MULLIS, a/k/a STAN MULLIS, and ANGEL C. MULLIS, a/k/a ANGEL MULLIS, a/k/a ANGEL SANTILLI, and JONATHAN ROBERT JOSSEL, a/k/a JONATHAN JOSSEL, and EDUARDO ROMAY HERNANDEZ, a/k/a EDUARDO L ROMAY HERNANDEZ, a/k/a EDUARDO ROMARY, a/k/a EDUARDO L. ROMAY HERNANDEZ, a/k/a HERNANDEZ EDUARDO ROMAY, a/lc/a HERNANDEZ EDUARDO L OMay, a/k/a EDUARDO ROMAY, a/k/a MR EDUARDO L. ROMAY, and GLADYS C. RIONDA, a/k/a SUITO GLADYS RIONDA, a/k/a GLADYS C. RIONDA-SUITO, a/k/a GLADYS SUITO, a/k/a GLADYS RIONDA SUITO,

Respondents.

PAUL D.S. EDWARDS,

Appellant,

vs.

Case No.: 81595

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TIMESHARE LIQUIDATORS, LLC, A/D/B/A TLC
RESORT LIQUIDATORS, A/D/B/A TLC RESORTS,
A/D/B/A TLC RESORTS VACATION CLUB,
A/D/B/A TLC RESORTS VACATION CLUB, LLC,
A/D/B/A TLC TRAVEL, A/D/B/A
TLCRESORTS.COM, A/D/B/A VIP TRAVEL,
A/D/B/A VIP VACATIONS; CASH4ASKING,
LLC, A/D/B/A CASH4ASKING.COM; STANLEY
C. MULLIS, A/K/A STANLEY MULLIS, A/K/A
STAN MULLIS; ANGEL MULLIS, A/K/A ANGEL
C. MULLIS; EDUARDO ROMAY HERNANDEZ,
A/K/A EDUARDO L. ROMAY HERNANDEZ,
A/K/A EDUARDO ROMARY, A/K/A EDUARDO
L. ROMAY HERNANDEZ, A/K/A HERNANDEZ
EDUARDO ROMAY, A/K/A HERNANDEZ
EDUARDO L. ROMAY, A/K/A EDUARDO
ROMAY, A/K/A EDUARDO L. ROMAY; AND
GLADYS C. RIONDA, A/K/A SUITO GLADYS
RIONDA, A/K/A; GLADYS C. RIONDA-SUITO,
A/K/A GLADY SUITO, A/K/A GLADYS RIONDA
SUITO,

REPLY IN SUPPORT OF MOTION FOR DISMISSAL OF APPEAL
CHALLENGING EIGHTH JUDICIAL DISTRICT COURT CASE
NUMBER A-19-799140-C

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and Gladys Rionda Suito

I. INTRODUCTION

The proper and timely filing of a notice of appeal is a fundamental jurisdictional requirement. *See In re Duong*, 118 Nev. 920, 922, 59 P.3d 1210, 1212 (2002). In this case, the District Court’s May 6, 2020, Order Granting Motion to Strike Complaint for Plaintiff’s Refusal to Comply with the Court’s Orders Granting Defendants’ Motions for More Definite Statement (the “Order Granting Motion to Strike”) resolved all of the claims in Eighth Judicial District Court case number A-19-799140-C. Because Appellant Paul D.S. Edwards (“Edwards”) did not file a notice of appeal until August 10, 2020 – more than three months later – the Court lacks jurisdiction to entertain an appeal regarding the Order Granting Motion to Strike or any of the interlocutory orders that were entered in case number A-19-799140-C. Accordingly, the Court should grant the Cash4Asking Respondents’ motion for partial dismissal.

II. LEGAL ARGUMENT

Nevada’s Appellate Courts may only entertain an appeal that is authorized by statute or court rule. *See, e.g., Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994). So, while many courtesies are extended to proper person litigants, the Appellate Courts simply do not have discretion or authority to consider a matter that was not timely appealed.

Here, Edwards' notice of appeal is untimely as to case number A-19-799140-C. Although Edwards admirably attempted to argue otherwise in his opposition, this Court should grant the Cash4Asking Respondents' motion for partial dismissal because: (A) NRCP 54(b) certification was not required in this case; and (B) the Order Granting Motion to Strike was a final order.

A. NRCP 54(b) CERTIFICATION IS NOT AN ISSUE.

In his opposition, Edwards cites to *Mallin v. Farmers Insurance Exchange* for the proposition that an order which resolves less than all of the claims in a consolidated action is not appealable unless the matter is certified pursuant to NRCP 54(b).¹ See Opposition at page 6 (citing 106 Nev. 606, 609, 797 P.2d 978, 980 (1990)). And, he contends, because the District Court did not certify the Order Granting Motion to Strike as final or address whether there was "no just reason for delay," it was proper to postpone filing a notice of appeal until a final order issued in the other consolidated case (number A-18-776375-C).

¹ NRCP 54(b) provides: "When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."

In so arguing, Edwards overlooks the fact that *Mallin* was explicitly overruled in *Matter of Estate of Sarge*, 134 Nev. 866, 432 P.3d 722 (2018).

Indeed, in *Estate of Sarge*, the Court held:

We thus overrule our decision in *Mallin* to the extent it holds that cases consolidated in the district court become a single case for all appellate purposes. Consolidated cases retain their separate identities so that an order resolving all of the claims in one of the consolidated cases is immediately appealable as a final judgment under NRAP 3A(b)(1).

Id. at 870-71, 432 P.3d at 722.

In its ruling, the Court also noted the “weighty and compelling” reasons to depart from its previous opinion, including the *Mallin* Court’s failure to consider the nature of consolidation, reliance on federal case law that was overturned, and the Supreme Court of the United States’ persuasive reasoning in *Hall v. Hall*, 138 S. Ct. 1118, 1125 (2018). *See* 134 Nev. at 870, 432 P.3d at 722.

Thus, consistent with federal law, this Court has recognized that an order disposing of a case is an appealable final decision, even if the matter was consolidated with other cases that are not yet complete. *Id.*; *see also Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413, 135 S. Ct. 897, 904 (2015). As such, NRCP 54(b) certification is not an issue.

B. THE ORDER GRANTING MOTION TO STRIKE IS FINAL.

“This Court has consistently looked past labels” in assessing whether an order is final for purposes of NRAP 3A(b)(1). *Ginsburg*, 110 Nev. at 444, 874 P.2d at 733; *see also, e.g., Bally’s Grand Hotel & Casino v. Reeves*, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996). In doing so, the Court uses a functional approach to assess what an order actually does. *Id.*; *see also Bergenfield v. BAC Home Loans Servicing*, 131 Nev. 683, 685, 354 P.3d 1282, 1284 (2015).

Here, the Order Granting Motion to Strike was a case-ending, final determination because it dismissed Edwards’ complaint in case number A-19-799140-C with prejudice.² Although proceedings continued in the separate matter with which the case was consolidated, no further orders or judgment were entered in case number A-19-799140-C. Instead, the case closed because there was nothing left to litigate once Edwards’ complaint was dismissed with prejudice.

The Court has confirmed that an order of dismissal with prejudice is final and appealable. *See Bergenfield*, 131 Nev. at 686, 354 P.3d at 1284.³ The Court

² *See* Order Granting Motion to Strike, attached as Exhibit C to the Cash4Asking Respondents’ motion, at page 4.

³ Admittedly, this Court has not addressed in a published opinion the appealability of an order striking a complaint pursuant to NRCP 12(e). In an unpublished order, this Court noted that an order striking an amended complaint in its entirety “may effectively dismiss the entire action and constitute a final, appealable judgment.”

has also reviewed with some regularity case-ending sanctions, including those ordered pursuant to NRCP 37 and NRCP 41.⁴ *See, e.g., GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995); *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 95, 787 P.2d 777, 781 (1990).

So, the Order Granting Motion to Strike in this case was an appealable final judgment because it disposed of all the issues in case number A-19-799140-C. Because Edwards did not file a timely notice of appeal, this Court lacks jurisdiction to consider arguments relating to the Order Granting Motion to Strike or other issues in case number A-19-799140-C.

III. CONCLUSION

For the foregoing reasons and the reasons stated in the Cash4Asking Respondents' motion, Edwards' appeal should be dismissed in part and the caption in case numbers 81759 and 81595 should be updated to reflect that Cash4Asking,

See Bonaventura v. Ross, case no. 64370, 2014 WL 1101588 130 Nev. 1155 (Order Dismissing Appeal, Mar. 18, 2014).

⁴ In addition to striking the complaint under NRCP 12(e), the District Court also dismissed the complaint under NRCP 41(b). *See* Order Granting Motion to Strike, attached as Exhibit C to the Cash4Asking Respondents' motion, at page 4, n. 4.

Eduardo Romay Hernandez, and Gladys Rionda Suito are no longer Respondents in this matter.

Dated this 29nd day of December, 2020.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION FOR DISMISSAL OF APPEAL CHALLENGING EIGHTH JUDICIAL DISTRICT COURT CASE NUMBER A-19-799140-C** was filed electronically with the Supreme Court of Nevada on the 29th day of December, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Brian Clark

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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