

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY TAYLOR,

Appellant,

vs.

KEITH BRILL, M.D. and WOMEN'S
HEALTH ASSOCIATES OF SOUTHERN
NEVADA-MARTIN, PLLC,

Respondents.

Electronically Filed
Jul 29 2022 10:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No.: 84421
District Court Case No.: A773472

**RESPONDENTS, KEITH BRILL, M.D. AND WOMEN'S HEALTH
ASSOCIATES OF SOUTHERN NEVADA-MARTIN, PLLC'S REPLY TO
APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
McBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Phone: (702) 792-5855
Attorneys for Respondents

I.

INTRODUCTION

This appeal stems from a post judgment order denying the Appellant's motion to disqualify the Respondents' law firm. Specifically, Appellant sought to disqualify McBride Hall from representing Respondents for purposes of the appeal of the jury verdict in favor of the defense, because McBride Hall hired a paralegal who was formerly employed by the law firm representing Appellant. This appeal followed.

Because there is no statute or court rule that authorizes appealing post-judgment order denying a motion to disqualify counsel, this Court issued its Order to Show Cause why this appeal should not be dismissed for lack of jurisdiction providing Appellant 30 days to respond. The Response Appellant submitted on July 15, 2022 falls far short of demonstrating jurisdiction.

Appellant alleges that the Nevada Supreme Court has jurisdiction to hear her appeal under NRAP 3A(b)(8) as a special order issued after final judgment, Nevada jurisprudence has never defined a post judgment order on disqualification as such. Appellant's argument is ill-founded and provides no support for the claim that the District Court's decision to deny the motion to disqualify constitutes a "special order" under NRAP 3A(b)(8). The Appellant's interpretation of the rule is incorrect. This Court does not have jurisdiction to hear this appeal. The proper way for Appellant to challenge the subject ruling is through an original writ petition.

II.

LEGAL ARGUMENT

The Supreme Court of Nevada may only consider appeals authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). NRAP 3A(b) defines what constitutes an appealable determination. Appellant's argument that the District Court's denial of the motion to disqualify Respondents' law firm establishes a "special order entered after final judgment" under NRAP 3A(b)(8) is not correct.

Not every post-judgment order is appealable. To be appealable, a post-judgment order must affect the rights of the parties growing out of the final judgment. *Burton v. Burton*, 99 Nev. 698, 669 P.2d 703 (1983); See also, *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002). In *Gumm*, the district court ordered the distribution of a portion of the plaintiff's judgment proceedings to lienholders and the plaintiff's trial attorney. *Id.* After appeal by the plaintiff, this Court ruled that because the distribution order affected the plaintiff's monetary rights incorporated in the judgment, the order constituted a special order appealable under NRAP 3A(b)(8). *Id.* at 1225.

Similarly, in *Davidson v. Davidson*, 132 Nev. 709, 713, 383 P.3d 880 (2016), the plaintiff appealed a district court decision denying her motion to enforce the parties' decree of divorce. Because the decree of divorce was the final judgment,

this Court ruled that the order denying the Appellant's motion affected her rights "growing out of the judgment previously entered" and determined that it had jurisdiction over this matter. *Id.* at 883.

Conversely, this Court ruled that an order granting a motion to vacate final judgment is not appealable as a special order after final judgment under NRAP 3A(b)(8). *TRP Int'l, Inc. v. Proimtu MMI Ltd. Liab. Co.*, 133 Nev. 84, 391 P.3d 763 (2017). This is because once a new trial has been granted, the final judgment of the original trial is vacated. *Id.* at 765. While the final judgment of the case at hand still stands, the mere fact that the court ruling was made after final judgment does not render it appealable. *Alvis v. State*, 99 Nev. 184, 660 P.2d 980. To qualify as a special order, the court ruling must affect a right of the parties growing out of the final judgment. *Id.* at 981.

The above-mentioned cases illustrate the circumstances when an appellant is and is not entitled to Supreme Court review under NRAP 3A(b)(8). Here, Appellant is not challenging a ruling that affects rights incorporated in the final judgment of the original case. Instead, Appellant is seeking to disqualify the Respondents' counsel from participating in the appellate process. Appellant did not argue in the District Court nor on this appeal that her rights were affected as related to the judgment, nor would such a claim be supported by the record. Respondents' counsel hired a paralegal *after* the jury's verdict in this matter. The separate appeal of the

judgment remains pending before this Court and the current appeal bears no relation to the final judgment in the original case. The District Court's decision to deny the Appellant's motion to disqualify is not a special order after final judgment. Therefore, this Court does not have jurisdiction to hear an appeal regarding the decision to deny the motion for disqualify.

As Appellant notes in her Response to the Court's Order to Show Cause, the Nevada Supreme Court has heard multiple cases on the topic of disqualification via extraordinary writs. That is the appropriate avenue should the Appellant wish to pursue this matter further.

III.

CONCLUSION

This Court should dismiss this appeal for lack of jurisdiction because no statute or rule authorizes the appeal of the motion to disqualify counsel.

Dated this 29th day of July, 2022.

McBRIDE HALL

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July 2022, service of the foregoing **RESPONDENTS, KEITH BRILL, M.D. AND WOMEN'S HEALTH ASSOCIATES OF SOUTHERN NEVADA-MARTIN, PLLC'S REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** was served electronically to all parties of interest through the Court's CM/ECF system as follows:

ADAM J. BREEDEN, ESQ.
Nevada Bar No. 008768
BREEDEN & ASSOCIATES, PLLC
376 E. Warm Springs Rd., Suite 120
Las Vegas, NV 89119
Attorney for Appellant

/s/Candace Cullina

An employee of
McBRIDE HALL