

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Electronically Filed
Jul 26 2021 08:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

VS.

$$\left. \begin{array}{l}) \\) \\) \\) \end{array} \right\}$$

Respondent.

0
1
2
3
4
5
6
7
8
9
0
1

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8

1 Preliminarily, this notice of appeal is untimely, as the notice of entry
2 order for the Order filed March 15th was filed and served on March 16,
3 2021. Thirty days later would be April 15, 2021. (*See* Notice of Entry of
4 Order filed March 16, 2021 as Exhibit A) Hence, even if the Order filed
5 March 15th was appealable, the thirty days to file an appeal after service of
6 notice of entry of judgment under NRAP 4(a)(1) as long passed.
7

8
9 This is the second Notice of Appeal, by Appellant, filed for the very
10 same order (*see* Notice of Appeal filed in Supreme Court April 9, 2021 as
11 Exhibit B; *see also* Nevada Supreme Court case number 82763). Appellant
12 previously filed a Notice of Appeal on April 9, 2021 regarding the Order
13 filed March 15, 2021, and this Court dismissed that appeal on July 2, 2021
14 (*see* Order Dismissing Appeal in case number 82763 as Exhibit C). The
15 appeal was dismissed because “The challenged order does not resolve the
16 claims asserted in the district court proceedings and expressly denies
17 appellant's ‘Counter-motion to Enforce the Settlement Agreement and to
18 Dismiss Case with Prejudice.’ (*See* Exhibit C) Even with the Appellant
19 arguing in her filed response to the Order to Show Cause that the district
20 court order certifying the March 15th order as final (which was filed June
21 9th in district court) gave this Court jurisdiction, this Court did not agree
22 with that analysis. *Id.*
23
24
25
26
27
28

1 There have been no subsequent orders entered in the district court
2 case following this Court's order dismissing appeal in case number 82763.
3
4 Indeed, there is no proper basis on which Appellant can file a second notice
5 of appeal on the same order that this Court has expressly denied is
6
7 appealable. This Court was clear that the March 15th order was not
8
9 appealable (even with an order certifying it as a final order filed June 9th)
10 and as such there is no basis for the filing of a second appeal.

11 **I. THERE IS NO JURISDICTION FOR THE APPEAL**
12 **UNDER NRAP 3A(b) AND NRAP 4a(1).**

13 An order must be a final order (judgment) pursuant to NRAP 3A(b)
14 and NRAP 4a(1) and NRAP 4(a)(3). This Court has ruled on various types
15 of orders that are NOT subject to appeal. For example, "no appeal may be
16 taken from an order quashing service of process." *See e.g. Jarstad v.*
17
18 *National Farmers Union*, 92 Nev. 380, 552 P.2d 49 (1976); *see also Davis*
19 *v. Eighth Judicial Dist. of State of Nev.*, 87 Nev. 332, 629 P.2d 1209
20 (1981). In *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135
21
22 (1990) this Court found that no appeal lies from an order certifying a
23 juvenile to stand trial as an adult. In *Taylor Constr. Co. v. Hilton Hotels*,
24
25 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) this Court found there is
26
27 no right to an appeal from an order denying summary judgment. In *Kokkos*
28

1 v. *Tsalikis*, 91 Nev. 24, 25, 530 P.2d 756, 756-57 (1975) this Court found
2 that there is not a right to appeal an order setting aside a default.
3

4 This Court in the Order to Show Cause for dismissal of the first
5 appeal filed May 20, 2021 properly cited *Brown v. MHC Stagecoach, LLC*,
6 129 Nev. 343, 301 P.3d 850 (2013) and the holding that with regards to an
7 order granting a motion to enforce a settlement agreement is not a final
8 judgment where it does not enter judgment in favor of a party or otherwise
9 resolve the pending claims.
10
11

12 Additionally, in *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440,
13 446, 874 P.2d 729, 733 (1994), the Nevada Supreme Court held that a
14 district court's order approving a settlement agreement was not a final
15 appealable judgment because the parties claims were not dismissed or
16 otherwise resolved. *Valley Bank of Nevada* and its holding was also cited
17 by this Court in the Order Dismissing Appeal. (See Exhibit C)
18
19
20

21 Here, this Court in the Order Dismissing Appeal EXPRESSLY
22 found that the order granting Respondent's Motion to Enforce Settlement
23 Agreement was NOT a final order. The Court also found that even though
24 there was an order certifying that March 15th order as final still did not
25 make it a final judgment subject to appeal. (See Exhibit C)
26
27
28

Nothing has changed since that Order Dismissing Appeal. To re-file a Notice of Appeal just two weeks after this Court dismissed her previous appeal on the same order that this Court has already found it is not a final order that is appealable (even with an order certifying it as final) shows this Court clearly lacks jurisdiction for an appeal and it should be dismissed.

II. CONCLUSION

In accordance with the foregoing, Respondent Coty Refaely respectfully requests that this Honorable Court dismiss the appeal as the instant order in question is not a final order and as such this Court does not have jurisdiction under NRAP 3A(b) to entertain an appeal of it.

Bv: /s/ Michael S. Strange
MICHAEL S. STRANGE,
ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
Attorney for Respondent

1 **CERTIFICATION PURSUANT TO NRAP 28.2**

2 I, Michael S. Strange, attorney for Respondent in the above matter,
3
4 do hereby certify pursuant to NRAP 28.2 the following:

5 1. I have read the foregoing Motion;

6
7 2. To the best of my knowledge, information and belief, the Motion
8 is not frivolous or interpose for any improper purpose, such as to harass or
9 to cause unnecessary delay or needles increase in the cost of litigation;
10

11 3. I believe that this Motion complies with applicable Nevada Rules
12 of Appellate Procedure, including the requirement of Rule 28(e) that every
13 assertion in the Motion regarding matters in the records be supported by a
14 reference to the page and volume number, if any, of the appendix where the
15 matter relief on is to be found; and
16
17

18 4. I represent that the Motion complies with the formatting
19 requirements of Rule 32(a)(4)-(6), and either the page- or type-volume
20 limitations state in Rule 32(a)(7).
21

22 I declare the foregoing is true under the penalty of perjury.

23
24 /s/ Michael S. Strange
25 Michael S. Strange, Esq.

7/26/2021
 Date

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

P. Sterling Kerr, Esq.

7

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Taylor Simpson, Esq.
c/o Law Offices of P. Sterling Kerr
2450 St. Rose Parkway, Suite 120
Henderson, NV 89074
Attorney for Appellant

Bv: /s/ Michael S. Strange
MICHAEL S. STRANGE,
ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
Attorney for Respondent