

***Reno Hilton Resort Corp. v. Verderber*, 121 Nev. Adv. Rep. 1 (February 24, 2005)<sup>1</sup>**

**CIVIL LAW - CIVIL PROCEDURE**

**Summary**

A class action was brought as a result of a Norwalk-like virus outbreak at the Reno Hilton in May and June of 1996. The district court divided the action into two phases. The first phase consisted of a jury trial regarding liability and class-wide punitive damages. The jury, imposing \$25 million in punitive damages, found that the appellant's (Reno Hilton Resort Corp.) policy of unpaid sick leave was the proximate cause of the outbreak. The second phase, which has not yet ensued, will consist of individual hearings to assess compensatory damages for each class member.

Following the conclusion of the first phase, the appellants moved for judgment notwithstanding the verdict, or in the alternative a new trial. The district court denied the motion, and appellants filed a notice of appeal from that order denying a new trial. Respondent moved to dismiss for lack of jurisdiction.

Appellants argued on appeal that the plain language of NRAP 3A(b)(2)<sup>2</sup> permits the appeal. Respondent argued that the rule applies only to post-judgment orders denying a new trial and not to an interlocutory order entered between phases of a bifurcated action.

**Issue and Disposition**

**Issue**

Following the conclusion of the first phase of a bifurcated trial, can a party, under NRAP 3A(b)(2), appeal the district court's order "granting or refusing a new trial?"

**Disposition**

No. NRAP 3A(b)(2) does not permit an immediate appeal from an interlocutory order "granting or refusing a new trial" motion addressed to an interlocutory order or judgment. The appeal can only be made following a final judgment.

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<sup>1</sup> Robert M. Henriksen

<sup>2</sup> NEV. R. APP. P. 3A(b)(2) provides in pertinent part:

An appeal may be taken: (2) from an order granting or refusing a new trial, or granting or refusing to grant or dissolving or refusing to dissolve an injunction, or appointing or refusing to appoint a receiver, or vacating or refusing to vacate and order appointing a receiver, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial, or from any order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children, and from any special order made after final judgment except an order granting a motion filed and served within sixty (60) days following an entry of a default judgment, setting aside the judgment pursuant to N.R.C.P. 60(b)(1).

## **Commentary**

### **State of the law before *Reno Hilton Resort Corp. v. Verderber***

Prior to *Reno Hilton Resort Corp. v. Verderber*, various Nevada Supreme Court decisions, deciding whether to allow an appeal, emphasized looking beyond the title of the order or motion, and look at what the order or motion actually seeks.<sup>3</sup> It matters more what the action actually does than what the action is called.<sup>4</sup> Furthermore, there is evidence that the Supreme Court disfavored piecemeal review.<sup>5</sup> The Supreme Court also recognized in *Valley Bank of Nevada v. Ginsburg*, that a “final appealable judgment” is one that disposes of all of the issues and leave nothing left for the trial court to decide.<sup>6</sup>

### **Other Jurisdictions**

In *LCR, Inc. v. Linwood Properties*, the Supreme Court of Oklahoma dismissed an appeal for a new trial from a partial summary judgment.<sup>7</sup> The trial court granted partial summary judgment, disposing of some of the issues.<sup>8</sup> The Respondent made a motion for a new trial.<sup>9</sup> Upon consideration of that motion, the trial court granted the motion for new trial.<sup>10</sup> The appellant’s appealed, and the Supreme Court of Oklahoma dismissed appellant’s appeal for lack of jurisdiction, holding that because the summary judgment only disposed of some of the issues, it was not a final judgment, allowing an immediate appeal.<sup>11</sup>

In *Cobb v. University of Southern California*, the California Court of Appeals held that an order granting a new trial is only appealable if it disposes of all of the issues placed before the trial court and represents a final judgment.<sup>12</sup> The court emphasized “the order granting a new trial, issued prior to final determination of all causes of action and issues in the case, was premature and is not appealable.”<sup>13</sup>

### **Effect of *Reno Hilton Resort Corp. v. Verderber***

The Nevada Supreme Court in *Verderber* establishes the premise that NRAP 3A(b)(2) does not permit an appeal from an order granting or denying a new trial motion addressed to an interlocutory order or judgment. A judgment is not final in a bifurcated action until the district court resolves both issues in the action.

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<sup>3</sup> See, e.g., *Bally’s Grand Hotel v. Reeves*, 112 Nev. 1487, 929 P.2d 936 (1996); see also *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

<sup>4</sup> *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 874 P.2d 729 (1994).

<sup>5</sup> See, e.g., *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441 (1986).

<sup>6</sup> 110 Nev. 440, 874 P.2d 729.

<sup>7</sup> 918 P.2d 1388 (Okla. 1996).

<sup>8</sup> *Id.* at 1392.

<sup>9</sup> *Id.* at 1390.

<sup>10</sup> *Id.* at 1390.

<sup>11</sup> *Id.* at 1392.

<sup>12</sup> 53 Cal. Rptr. 2d 71, 73 (Ct. App. 1996).

<sup>13</sup> *Id.*

## **Conclusion**

The Supreme Court of Nevada established that a final judgment is one that disposes of all of the issues in the case. Because the district court bifurcated the issues in *Reno Hilton Resort Corp. v. Verderber*, a resolution of the first issue could not constitute a final judgment. The district court did not resolve all of the issues which the parties presented. Thus, NRAP 3A(b)(2) does not permit an appeal from an interlocutory order granting or denying a new trial.