

SUPREME COURT OF NEVADA

Resnik v. Quality Loan Serv. Corp.

Resnik v. Quality Loan Serv. Corp. · No. 84751 · Decided August 3, 2022

SUMMARY

The Nevada Supreme Court dismissed an appeal from a district court order granting a temporary writ of restitution. The court held that no statute or court rule authorizes an appeal from such an order and that the order is not an injunction appealable under NRAP 3A(b)(3), while noting that writ relief may be available.

CASE DETAILS

COURT	Supreme Court of Nevada
JURISDICTION	Nevada
DECIDED	August 3, 2022
DOCKET	84751
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a district court order granting a temporary writ of restitution. A respondent moved to dismiss for lack of appellate jurisdiction, and the Nevada Supreme Court granted the motion.
STANDARD OF REVIEW	The court determined de novo whether it had appellate jurisdiction under Nevada statutes and court rules.
PRECEDENTIAL VALUE	Published Nevada Supreme Court order
PARTIES	Brad Resnik v. Quality Loan Service Corporation, Saticoy Bay LLC Series 4928 E Monroe Avenue, Nationstar Mortgage LLC, d/b/a Mr. Cooper, U.S. Bank Trust National Association, as Owner Trustee for VRMTG Asset Trust, Shellpoint

TOPICS

[appellate jurisdiction](#) [interlocutory appeal](#) [appellate procedure](#) [writ of certiorari](#) [civil procedure](#)

PRACTICE AREAS

[appellate jurisdiction](#) [appellate procedure](#) [civil procedure](#) [real estate remedies](#)

QUESTIONS PRESENTED

1. Whether a district court order granting a temporary writ of restitution is appealable under NRAP 3A(b)(3) as an injunction.
2. Whether the Nevada Supreme Court had appellate jurisdiction over the appeal from the temporary writ of restitution.

HOLDINGS

1. Because no Nevada statute or court rule expressly authorizes an appeal from an order granting a temporary writ of restitution, the order is not appealable unless it falls within an expressly appealable category.
2. An order granting a temporary writ of restitution is not equivalent to an injunction for purposes of appellate jurisdiction merely because it directs a sheriff or constable to act.
3. Dismissal of the appeal is without prejudice to the appellant's ability to seek appropriate writ relief.

KEY QUOTATIONS

“The right to appeal is statutory; if no statute or court rule provides for an appeal, no right to appeal exists.”
(at 1)

“The order granting a writ of restitution, while bearing some similarity to an injunction, does not command any party to act or refrain from acting on an ongoing basis to prevent irreparable harm or to undo a wrong, enforceable against that party by contempt.” (at 2)

“Accordingly, we decline to treat the order granting a writ of restitution as equivalent to an injunction for appeal purposes.” (at 3)

FACTUAL BACKGROUND

The district court issued a temporary writ of restitution. Resnik argued that the order was an injunction because it directed a sheriff or constable to act. The Supreme Court concluded that the order did not direct a party's ongoing conduct in the manner of an injunction and was not subject to the procedural requirements governing injunctions.

PROCEDURAL HISTORY

The Eighth Judicial District Court for Clark County entered an order granting a temporary writ of restitution. Resnik appealed, arguing that the order was an injunction appealable under NRAP 3A(b)(3). Saticoy Bay moved to dismiss, and the Supreme Court of Nevada dismissed the appeal for lack of jurisdiction without prejudice to Resnik's ability to seek writ relief.

DISPOSITION

dismissed

CASES CITED

- Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984)
- Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975)
- Peck v. Crouser, 129 Nev. 120, 124, 295 P.3d 586, 588 (2013)
- Nken v. Holder, 556 U.S. 418, 428 (2009)
- Orange County v. Hongkong & Shanghai Banking Corp., 52 F.3d 821, 825-26 (9th Cir. 1995)
- Chauvin v. Nat'l Default Serv. Corp., No. 59380, 2012 WL 472742 (Nev. Feb. 13, 2012)
- Shawhan v. Shawhan, No. 52459, 2008 WL 6124824 (Nev. Dec. 19, 2008)
- Naseef v. County of Clark, Docket No. 34947 (May 11, 2000)
- K.J.B. Inc. v. Second Judicial Dist. Court, 103 Nev. 473, 745 P.2d 700 (1987)
- Farnow v. Eighth Judicial Dist. Court, 64 Nev. 109, 178 P.2d 371 (1947)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/nevada-supreme-court-of-nevada/2022/resnik-v-quality-loan-serv-corp-m4v7x2g8>