

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOEN FAMILY TRUST, MICHAEL D.  
THOEN AND TRICIA L. THOEN,  
TRUSTEES,  
Appellants,  
vs.  
JUDY GRAHAM AND WILLIAM  
GRAHAM,  
Respondents.

No. 43325

**FILED**

JUL 27 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a summary judgment in a real property case. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed. Specifically, we could not discern whether the summary judgment constituted a final, appealable judgment, given that the summary judgment order only expressly resolved respondents' specific performance claim. Respondents' claim for breach of the covenant of good faith and fair dealing is apparently still pending below. And although the summary judgment may have implicitly determined appellants' counterclaims for

breach of contract, fraud, and breach of the covenant of good faith and fair dealing, it apparently leaves unresolved appellants' third-party fraud claim against ReMax Elite, Inc. and Patrick Bergsrud. A summary judgment is not appealable as a final judgment unless it resolves the rights and liabilities of all parties.<sup>1</sup>

We further noted that our jurisdictional uncertainty was the result of appellants' failure to fully complete the docketing statement and attach the required documentation. Consequently, we also ordered appellants to file an amended docketing statement.

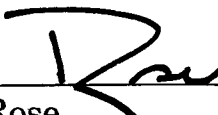
Appellants have filed an amended docketing statement, which appears to constitute their entire response to our show cause order. Our review of the amended docketing statement and the attached pleadings reveals that our initial jurisdictional concerns were correct. Respondents' claim for breach of the good-faith-and-fair-dealing covenant and appellants' third-party claim for fraud remain pending below. Contrary to

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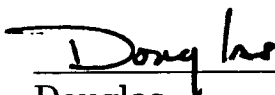
<sup>1</sup>Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

appellants' assertion, NRS 155.190(6)<sup>2</sup> does not authorize this interlocutory appeal. That statute only governs appeals in estates cases.<sup>3</sup>

Accordingly, as we lack jurisdiction over this appeal, we ORDER this appeal DISMISSED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Stewart L. Bell, District Judge  
Janet Trost, Settlement Judge  
Sullivan Law Group  
Darrell Lincoln Clark  
Clark County Clerk

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<sup>2</sup>NRS 155.190(6) states that an appeal may be taken from an order “[d]irecting or authorizing the sale or conveyance or confirming the sale of property.”

<sup>3</sup>See NRS 132.010.

<sup>4</sup>We vacate our temporary stay, imposed on June 1, 2004, and we deny as moot appellants’ motion for a stay pending appeal.