

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID HABIBIAN, AN INDIVIDUAL;  
NOSHIN HABIBIAN, AN INDIVIDUAL;  
AND FRANK HABIBIAN, AN INDIVIDUAL,  
Appellants,

vs.

JOSEPH A. MARZAN, AN INDIVIDUAL;  
AND JACQUELYN A. MARZAN, AN  
INDIVIDUAL,  
Respondents.

No. 45790

**FILED**

APR 26 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

DAVID HABIBIAN, AN INDIVIDUAL;  
NOSHIN HABIBIAN, AN INDIVIDUAL;  
AND FRANK HABIBIAN, AN INDIVIDUAL,  
Appellants,

vs.

JOSEPH A. MARZAN, AN INDIVIDUAL;  
AND JACQUELYN A. MARZAN, AN  
INDIVIDUAL,  
Respondents.

No. 46107

DAVID HABIBIAN, AN INDIVIDUAL;  
NOSHIN HABIBIAN, AN INDIVIDUAL;  
AND FRANK HABIBIAN, AN INDIVIDUAL,  
Appellants,

vs.

JOSEPH A. MARZAN, AN INDIVIDUAL;  
AND JACQUELYN A. MARZAN, AN  
INDIVIDUAL,  
Respondents.

No. 46784

**ORDER DISMISSING APPEALS (DOCKET NOS. 45790 AND 46107),  
AND DENYING MOTION TO CONSOLIDATE**

The first two consolidated appeals are from district court orders entered on (1) August 4, 2005, setting aside a sale of real property to one of the appellants and awarding specific performance of a contract to sell the real property to respondents (Docket No. 45790) and (2)

September 14, 2005, awarding attorney fees and costs to respondents (Docket No. 46107). The third appeal is from a district court order entered on February 8, 2006, adding to and amending the findings of fact in a prior specific performance order (Docket No. 46784).

On March 16, 2006, this court issued an order to show cause in the consolidated appeals, noting that it was unclear whether this court had jurisdiction over the consolidated appeals. In particular, neither the August 4 order nor the September 14 order appeared to adjudicate all of the parties' claims, and we were unable to determine from the documents before this court whether the district court had entered a final written judgment resolving all of the issues before it.<sup>1</sup>

In their timely-filed response, appellants provided this court with the district court's July 25, 2005 findings of fact and conclusions of law. Although that order appeared to resolve all remaining issues in the case, an NRCP 52(b) motion to amend or add findings of fact to the July 25 order was timely filed on August 1, 2005, and decided by the district court on February 8, 2006.<sup>2</sup> The February 8 order, being appealed in Docket No. 46784, substantively amended the July 25 order and made additional findings of fact, and thus apparently constitutes the final judgment in this matter.<sup>3</sup> Consequently, the August 4 and September 14 orders being

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<sup>1</sup>See NRAP 3A(b)(1).

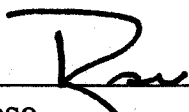
<sup>2</sup>The NRCP 52(b) motion tolled the time for filing an appeal under NRAP 4(a)(4)(ii).

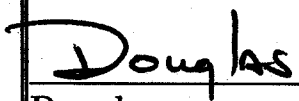
<sup>3</sup>NRAP 4(a)(4)(ii) and (a)(5); Morrell v. Edwards, 98 Nev. 91, 640 P.2d 1322 (1982). Appellants have timely appealed from the February 8 order in Docket No. 46784.

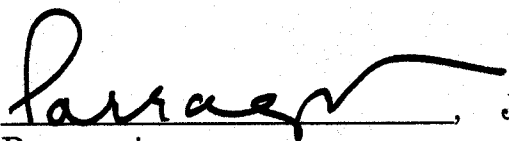
appealed in Docket Nos. 45790 and 46107, respectively, were merely interlocutory orders,<sup>4</sup> which, although not independently appealable, may properly be considered in the context of a final judgment.<sup>5</sup>

Accordingly, as appellants may properly challenge the August 4 and September 14 interlocutory orders within the context of their appeal in Docket No. 46784, the appeals in Docket Nos. 45790 and 46107 are dismissed.<sup>6</sup> Appellants shall have thirty days from the date of this order to file a supplemental opening brief in Docket No. 46784, addressing any appellate issues regarding the appeal from the February 8 order in that docket. Thereafter, briefing shall proceed in accordance with NRAP 31(a).

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

<sup>4</sup>The August 4 “judgment” being appealed in Docket No. 45790 did nothing to alter the rights and liabilities of the parties, determined in the July 25 order, and, despite being styled as a “judgment,” was not the final judgment in this case. See NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

<sup>5</sup>Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

<sup>6</sup>We deny as moot the February 22, 2006 motion to consolidate, filed in all three appeals. The court clerk shall transfer the opening brief and eight-volume joint appendix that were filed in Docket Nos. 45790 and 46107 on March 17, 2006, to Docket No. 46784.

cc: Hon. Michael A. Cherry, District Judge  
David J. Winterton & Associates, Ltd.  
Gerry G. Zobrist  
Clark County Clerk