

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JOHN CAPONE; AND
GENNARO CAPONE, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF KATHRYN B. CAPONE,
DECEASED,

Appellants,

vs.

MAR-A-LAGO HOMEOWNERS
ASSOCIATION, A NEVADA
CORPORATION; AND BRUSSEL
CONSULTING AND CONSTRUCTION
MANAGEMENT, A NEVADA
CORPORATION,

Respondents.

No. 48726

FILED

OCT 25 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from various district court orders. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On May 29, 2007, this court denied a motion to dismiss this appeal for lack of jurisdiction, concluding that the grounds asserted in the motion lacked merit. But this court identified other jurisdictional defects in the appeal: it appeared that the notice of appeal was premature as the district court had not yet resolved all of the claims against all of the parties in the consolidated district court action.¹ In particular, it appeared that the claims against defendant Environmental Health Services (EHS) and the third-party claims against R.W. Stucco and R & R Landscaping

¹See Mallin, 106 Nev. at 609, 797 P.2d at 980 (explaining that an order that resolves less than all of the claims against all of the parties in a consolidated action is not appealable as a final judgment).

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appeared to have been settled but that those claims had not been formally dismissed in a written order. Therefore, we ordered appellants to show cause why this appeal should not be dismissed.²

Appellants then sought reconsideration of the show cause order or in the alternative a motion for a stay, but they did not provide this court with any written orders resolving the claims against EHS, R.W. Stucco, and R & R Landscaping. In resolving the motion, we again observed that although appellants had settled with EHS, appellants' claims against EHS still had not been formally resolved in a written order filed by the district court.³ Additionally, we observed that the third-party claims against R.W. Stucco and R & R Landscaping also had not been formally dismissed in a written order. We therefore denied appellants' motion to reconsider the order to show cause. But we gave appellants an additional 15 days to cure the jurisdictional defect by providing this court with file-stamped district court orders resolving the pending claims

²Our order to show cause also observed that the third-party claims against Cedar Roofing and Nevco Air Conditioning and Sheet Metal appeared to have been settled but had not been formally resolved in a written order. We subsequently noted in an order filed on September 11, 2007, that the district court had entered a written order dismissing the third-party claims against these two parties on July 16, 2007, and therefore those claims were no longer pending in the district court.

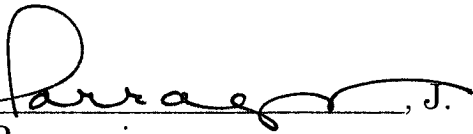
³The district court's pre-dismissal order approving appellants' settlement with EHS as a good-faith settlement is not a final judgment for purposes of NRAP 3A(b)(1). Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445-46, 874 P.2d 729, 733-34 (1994) ("Until a stipulation to dismiss this action is signed and filed in the trial court, or until this entire case is resolved by some other final, dispositive ruling, matters potentially remain for the district court's consideration.").

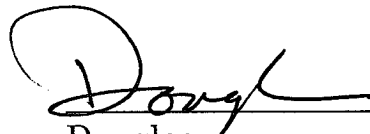
against EHS, R.W. Stucco, and R & R Landscaping.⁴ Appellants' response was due no later than September 26, 2007.

To date, appellants have not responded to our order or provided this court with the documents necessary to establish this court's jurisdiction. Appellants bear the burden of establishing that this court has jurisdiction.⁵ Appellants have not met that burden. Accordingly, we conclude that we lack jurisdiction over this appeal,⁶ and we therefore

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 18, District Judge
William F. Buchanan, Settlement Judge
Judd J. Balmer
Walsh & Furcolo LLP
Wood, Smith, Henning & Berman, LLP
Eighth District Court Clerk

⁴See NRAP 4(a)(6).

⁵*Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (“[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.”).

⁶See NRAP 4(a)(6).