IN THE SUPREME COURT OF THE STATE OF NEVADA

CELEBRATE HOMES XI, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
BREAN MACKENZIE AND LISA MACKENZIE, HUSBAND AND WIFE,
Respondents.

No. 49770

FILED

DEC 0 3 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order directing appellant to pay attorney fees incurred by respondents. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect: it appeared that the judgment or order designated in the notice of appeal is not substantively appealable because the district court had not entered a written order resolving all of the issues and rights and liabilities of all the parties to the district court action.[1]

[1]See NRAP 3A(b)(1) (providing that a final order or judgment is appealable); NRAP 3A(b)(2) (providing that a special order made after final judgment is appealable); see also Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (holding that a "final judgment" for purposes of NRAP 3A(b) is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-judgment matters).

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Accordingly, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.[2]

In response to the order to show cause, appellant argues that the district court impliedly validated the parties' settlement agreement and dismissed the complaint when it determined the amount of attorney fees that appellant had to pay to respondent under the parties' settlement agreement. Appellant therefore argues that the district court's order should be treated as a final judgment for purposes of NRAP 3A(b)(1). Respondents have filed a reply, arguing that the district court's order is neither a final judgment nor a special order after final judgment and therefore is not appealable.

The underlying district court action involves a complaint alleging several causes of action based on alleged constructional defects in single-family homes constructed. Appellant and respondents subsequently entered a settlement agreement. The agreement provides, among other things, that appellant will pay respondents' attorney fees and expenses within a specified time period and that the respondents will dismiss their complaint with prejudice "subject to the approval of the Court."[3] The

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[2]See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (explaining that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

[3]Respondents filed the complaint on behalf of themselves and as a class action on behalf of all similarly situated homeowners in the Cheyenne Valley Homeowners' Association. It appears that the district court never determined whether the action could be maintained as a class action. See NRCP 23(c). The settlement agreement states that the class claims "shall be dismissed without prejudice."

agreement further provides that the district court would resolve any disputes as to the amount of attorney fees and expenses that appellant would have to pay respondents under the agreement.

The district court order designated in the notice of appeal resolved a dispute over the amount of attorney fees and expenses owed under the settlement agreement. The district court has not, however, entered a written order dismissing the underlying action. We have explained, in Valley Bank of Nevada v. Ginsburg, that when the parties have entered a settlement agreement, there is no final judgment "[u]ntil a stipulation to dismiss . . . is signed and filed in the trial court, or until [the] entire case is resolved by some other final, dispositive ruling."[4] In this case, we cannot conclude that the district court's order resolving the dispute over the amount of attorney fees owed under the agreement constitutes a final, dispositive ruling. Nothing in the order indicates that the district court approved of the settlement or that it has formally dismissed the complaint. Therefore, the district court's order is not a final judgment for purposes of NRAP 3A(b)(1); rather, it is an interlocutory order that may be challenged on appeal from a final judgment.[5] Moreover, because there has been no final judgment, the district court's order cannot be appealed as a special order made after final judgment under NRAP

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[4]110 Nev. 440, 446, 874 P.2d 729, 733 (1994) (holding that order approving settlement proposal does not constitute a final judgment).

[5]See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

3A(b)(2).[6] Appellant has not demonstrated that a court rule or statute provides for an appeal from the order designated in the notice of appeal. Accordingly, we conclude that we lack jurisdiction over this appeal, and we therefore

ORDER this appeal DISMISSED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Susan Johnson, District Judge
Eugene Osko, Settlement Judge
Coleman Law Associates
Burdman Law Group
Eighth District Court Clerk

[6]See Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (holding that, to be appealable under NRAP 3A(b)(2), a special order made after final judgment "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered").