

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN WITTER AND DANIEL
ENGLISH,
Appellants,
vs.
MARY ELLEN HOUSTON; TIMOTHY
O. TUCKER; RANDOLPH TUCKER
AND MARILYN TUCKER, AS
EXECUTOR AND EXECUTRIX OF THE
ESTATE OF SCOTT BRIAN TUCKER;
AND TERESA TUCKER,
Respondents.

No. 34503

FILED

JUL 09 2002

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

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court approving a good faith settlement pursuant to NRS 17.245. The underlying action involves three cases relating to the estate of Scott Tucker. The first case was the probate of Scott Tucker's will. Respondent Mary Ellen Houston filed numerous creditor's claims against the estate, which the estate denied. The second case was filed by Houston against respondents Timothy, Randolph, and Marilyn Tucker, and appellants Dean Witter and Daniel English, as well as other parties not involved in this appeal. Houston asserted numerous tort and contract claims relating to assets at issue in the estate proceeding. The third case was filed by Houston against Randolph and Marilyn Tucker, as executor and executrix of the estate, asserting claims similar to those in the second case and also relating to property involved in the estate proceeding.

Ultimately, a settlement was reached between Houston, the estate, and the Tucker respondents. The terms of the settlement agreement settled Houston's claims against the estate in all three proceedings and against the Tucker respondents in the second case (the case on appeal). Pursuant to the settlement, the estate agreed to relinquish a \$325,000 IRA account at Dean Witter and real property located in Hawaii, and to execute a general release of all claims. In exchange, Houston agreed to execute a general release in favor of the estate and the Tucker respondents, and relinquish and renounce any interest in the estate's property.

The estate sought the district court's approval of the good faith settlement pursuant to NRS 17.245. Because the probate court had jurisdiction over the assets of the estate, however, the settlement had to be approved by the probate court. Thus, upon motion, the probate court conducted a consolidated hearing for the limited purpose of approving the settlement. Appellants Dean Witter and Daniel English (collectively "Dean Witter") opposed the settlement, and argued that it was negotiated in secret without their participation, was wholly disproportionate to the settling defendants' liability, and was not made in good faith. They further requested that, even if Houston's claims against the Estate and the Tucker respondents were dismissed, the estate be required to hold \$500,000 in a blocked trust account because Dean Witter would be prejudiced if those funds were dissipated.

After the hearing, the probate court entered an order approving the settlement as a good faith settlement under NRS 17.245 on June 9, 1999. The order also directed Dean Witter and Houston to quantify the settlement's value and submit a proposed order setting forth that value. Dean Witter filed the instant appeal in the second case from the June 9, 1999 order. Subsequently, the probate court entered a supplemental order setting forth the settlement value.

Respondents have moved to dismiss this appeal for lack of jurisdiction on the basis that the order is not appealable as a final judgment, it is not certified as final pursuant to NRCP 54(b), and it is not one of the appealable probate orders specified in NRS 155.190. Respondents also contend that Dean Witter is not an aggrieved party with standing to appeal the order. Dean Witter opposes the motion.

We conclude that the order is not substantively appealable under either NRAP 3A(b)(1) or NRS 155.190. NRAP 3A(b)(1) provides that an appeal may be taken from a "final judgment in an action or proceeding." A final, appealable judgment is "one that disposes of the issues presented in the case . . . and leaves nothing for the future consideration of the court," except for post-judgment matters such as attorney fees and costs.¹ This court has held that an order approving a

¹Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994).

settlement is not a final, appealable order.² Here, the district court's order approving the good faith settlement is not a final judgment under Ginsburg because it is not a formal order of dismissal. Further, any subsequent order of formal dismissal would only resolve the action as to some of several parties, and would not be a final judgment, although certification of finality under NRCF 54(b) might be available.³

Additionally, NRS 155.190 provides for appeals from certain orders rendered in probate proceedings. Of particular relevance here, an appeal may be taken from an order "[d]irecting or allowing the payment of a debt, claim, devise, or attorney's fee," or "[d]istributing property."⁴ Even if we were to construe the order as one directing the payment of a claim or distributing property, as well as approving the good faith settlement, Dean Witter's challenge to the order pertains to the approval of the good faith settlement and not specifically to the distribution of property. Moreover, Dean Witter filed its notice of appeal in the second case, a non-probate matter. Thus, the appeal provision in NRS 155.190, contained within Title 12 of NRS concerning the administration of the estates of deceased persons, does not apply. Additionally, we note that in its appellate briefs,

²See Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

³See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); see also Velsicol Chemical v. Davidson, 107 Nev. 356, 811 P.2d 561 (1991).

⁴NRS 155.190(10) and (12).

cc: Hon. Steven P. Elliott, District Judge
Jones Vargas/Reno
Avansino Melarkey Knobel McMullen & Mulligan
Laxalt & Nomura, Ltd./Reno
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Frank H. Roberts
Robison Belaustegui Sharp & Low
Whitehead & Whitehead
Washoe District Court Clerk