IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAMMY TAYLOR MANNING; AND IRIS SHIMABUKURO,
Appellants,
vs.
FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondent.

No. 67761

FILED
JAN 18 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

TAMMY TAYLOR MANNING; AND IRIS SHIMABUKURO,
Appellants,
vs.
WASHOE COUNTY, NEVADA BY AND THROUGH SHERIFF, WASHOE COUNTY, SHERIFF CHUCK ALLEN; AND FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondents.

No. 68316 ✓

ORDER DISMISSING APPEAL (DOCKET NO. 67761) AND REVERSING AND REMANDING (DOCKET NO. 68316)

These are unconsolidated appeals from a district court post-judgment order denying a motion to set aside a foreclosure sale and for damages and a district court order denying a petition for a writ of mandamus and declaratory relief. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Docket No. 67761

Respondent Federal National Mortgage Association (FNMA) filed a complaint in district court seeking judicial foreclosure and a deficiency judgment against appellants, the homeowners. The district

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court granted FNMA its requested relief and entered an order allowing it to proceed with a foreclosure sale of appellants' home.[1] After appellants' home was sold, they filed what they denominated as a motion to set aside the foreclosure sale and for an award of damages based on alleged failures to comply with certain notice statutes prior to the sale, which the district court denied. Thereafter, the district court denied appellants' motion to amend the order denying the "motion to set aside" and appellants then filed their appeal, which was docketed as Docket No. 67761.

In responding to appellants' arguments on appeal, FNMA asserts that the order denying the motion to set aside is not appealable as it does not fit within NRAP 3A(b)'s list of appealable determinations. And both parties agree that the order is not appealable as a "special order entered after final judgment." NRAP 3A(b)(8) (making such special orders appealable). Instead, in responding to this jurisdictional argument, appellants assert that the order denying the motion to set aside is appealable under NRAP 3A(b)(1) as it "is a final judgment *on their motion* [to set aside set aside the foreclosure sale and for damages]." (Emphasis added).

Rather than supporting this court's jurisdiction to consider this appeal, however, appellants' argument, coupled with a review of their "motion to set aside," demonstrates that the order denying that "motion" is void, such that we lack jurisdiction to consider appellants' appeal from that determination. It is well established that there can only be one final judgment in any action. *See Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) (recognizing the import of the rule that an action may have only one final judgment and refusing to adopt an

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[1]Appellants did not appeal this order.

argument that would cause there to be multiple final judgments in one action). And once the district court enters a final judgment, it lacks authority to reopen the judgment unless the "judgment is first set aside or vacated pursuant to the Nevada Rules of Civil Procedure." *See id.* at 396, 990 P.2d at 187.

In Docket No. 67761, the final judgment was the order that allowed the judicial foreclosure of appellants' home as that order disposed of all the issues presented in the case and left nothing for the future consideration of the court. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (providing that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs"). And while appellants' post-judgment filing was styled as a motion to set aside, in reality, it was a new complaint seeking new relief—the setting aside of the foreclosure sale and damages—based on events that occurred during the foreclosure sale.

Under these circumstances, the district court lacked jurisdiction to reopen the case and entertain the new relief sought by appellants. *See SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) (concluding that the district court lacked jurisdiction to reopen a final judgment "absent a proper and timely motion under the Nevada Rules of Civil Procedure"); *see also Greene*, 115 Nev. at 395, 990 P.2d at 186 (recognizing the import of the rule that an action may have only one final judgment). As a result, the district court's orders denying appellants' post-judgment requests for relief are void. *See Stapp v. Hilton Hotels Corp.*, 108 Nev. 209, 212, 826 P.2d 954, 956 (1992) (concluding that orders entered without jurisdiction are void). And because the orders are void, any appeal from those orders must be

dismissed. *See Harrah's Club v. Nev. State Gaming Control Bd.*, 104 Nev. 762, 764, 766 P.2d 900, 902 (1988) (dismissing an appeal because the orders being appealed from were void). Accordingly, we dismiss the appeal in Docket No. 67761.

Docket No. 68316

After the district court denied appellants' post-judgment motions in Docket No. 67761, appellants filed a petition for writ of mandamus and declaratory relief[2] against respondents the Washoe County Sheriff's Office (the Sheriff) and FNMA, which was assigned to same department as Docket No. 67761. That petition raised the same allegations regarding the failure to provide the statutorily-required notice of the judicial foreclosure sale as were raised in the "motion to set aside" in Docket No. 67761, in addition to new allegations regarding additional defects in noticing the sale.

Respondents moved to dismiss the petition, claiming, as is pertinent here, that both issue and claim preclusion barred the petition as the arguments made therein were made, or could have been made, in the district court proceedings in Docket No. 67761. In its order on the petition, the district court concluded that it had already addressed the issues raised by appellants in the previous case and that "the same result must maintain in the present action." After appellants' motion to amend the order denying their petition was denied, appellants filed an appeal which was docketed as Docket No. 68316.

Given the phrasing of the district court's order denying the petition, it appears that the requested relief was denied on preclusion

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[2]Because appellants present no arguments regarding declaratory relief, we do not address it in this order.

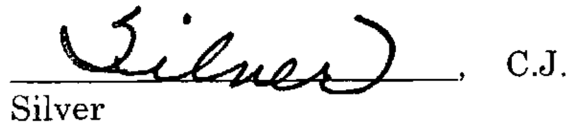
grounds, and such determinations are subject to de novo review on appeal. *See Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. ___, ___, 321 P.3d 912, 914 (2014) (recognizing that whether claim or issue preclusion applies to a case is a question of law reviewed de novo on appeal). Applying claim or issue preclusion to bar the relitigation of previously decided matters requires that "a valid final judgment has been entered" (claim preclusion) or that "the initial ruling must have been on the merits and have become final" (issue preclusion). *Id.* at ___, 321 P.3d at 915, 916 (internal quotation marks omitted).

As stated above, the order denying the purported motion to set aside the foreclosure sale and for damages in Docket No. 67761, which included appellants' allegations of deficiencies in the noticing of the foreclosure sale, was void. Thus, there is no judgment—final or otherwise—to which claim or issue preclusion could have attached. *See id.* Accordingly, we conclude that the district court erred in denying appellants' writ petition on preclusion grounds and we reverse that decision.

To the extent that the district court's order in Docket No. 68316 could be read as denying the writ petition on its merits, it fails to state the basis for its decision as it contains no findings of fact or conclusions of law. And, because appellants presented numerous fact-based arguments below asserting that the notices provided by respondents failed to comply with the relevant statutory provisions thus entitling appellants to damages and offered evidence that they asserted supported those arguments, factual findings are necessary for this court to properly review those issues on appeal. *See* NRS 21.140(1) (awarding aggrieved parties $500 and their actual damages if their property is sold to satisfy a judgment without proper notice); *Zugel v. Miller*, 99 Nev. 100, 101, 659

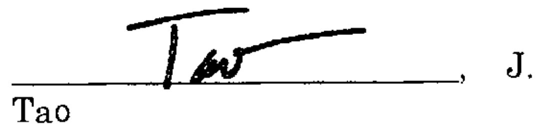
P.2d 296, 297 (1983) (stating that whether proper notice is provided is a question of fact when a party presents evidence that it did not receive proper notice and also providing that "[t]his court is not a fact-finding tribunal; that function is best performed by the district court"); *see also Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). Accordingly, we reverse and remand the order denying the writ petition and granting respondents' motion to dismiss in Docket No. 68316 for further proceedings consistent with this order.[3]

It is so ORDERED.



_______________, C.J.
Silver

_______________, J.
Gibbons



_______________, J.
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[3]Having considered respondents' argument that the appeal in Docket No. 68316 was untimely, we conclude that argument is without merit. We also conclude that respondents waived their estoppel argument by not raising it below. *See Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

cc: Hon. Patrick Flanagan, District Judge
Jill I. Greiner, Settlement Judge
T M Pankopf PLLC
Wright, Finlay & Zak, LLP/Las Vegas
Washoe County District Attorney/Civil Division
Washoe District Court Clerk