

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF DONALD L.
BRAUCH, AN ADULT.

SALVATORE GERACI AND CARMEN
GERACI,
Appellants,
vs.
JUDY JOHNSTON, OFFICE OF THE
PUBLIC GUARDIAN,
Respondent.

IN THE MATTER OF THE
GUARDIANSHIP OF THE ESTATE OF
RONALD BRAUCH, AN ADULT.

SALVATORE GERACI AND CARMEN
GERACI,
Appellants,
vs.
JUDY JOHNSTON, OFFICE OF THE
PUBLIC GUARDIAN,
Respondent.

No. 36895

FILED

FEB 15 2002

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

No. 36896

ORDER DISMISSING APPEALS

These are consolidated appeals from an order of the district court affirming and adopting the master's report and recommendation in two related guardianship proceedings. The underlying actions were initiated when the respondent Public Guardian filed petitions to establish guardianship over Donald Earl Brauch and Ronald Brauch, who were brothers and the proposed adult wards. The district court appointed respondent as guardian of both Donald and Ronald.

During the course of the guardianship proceedings, the guardian filed a petition for return of property and money obtained by appellants Salvatore and Carmen Geraci, who apparently were Donald and Ronald's former caregivers. The petition was filed pursuant to NRS 159.091, which allows the guardian to file a petition alleging that a person has or is suspected of having embezzled or converted the ward's property. Upon the filing of the petition, "the court may require such person to appear and answer under oath concerning the matter, and proceed as provided in NRS 143.110 and 143.120."¹ NRS 143.110 and 143.120, which govern the procedure when conversion of a deceased person's property is alleged, provide that upon examination by the court, if it appears that a person has converted the decedent's property, the court may order the person to deliver the property to the personal representative.²

Here, the district court referred the matters to a master, who conducted a joint evidentiary hearing. After the hearing, the master entered a report and recommendation, finding that the Geracis "used their influence to derive substantial financial gain" from Donald and Ronald and recommending that the Geracis return \$176,271.47 to the estate of Donald, and \$12,000.00 to the estate of Ronald, the amounts representing

¹NRS 159.091.

²NRS 143.120(2). "The order of the court for the delivery of the property is prima facie evidence of the right of the personal representative to the property in any action that may be brought for its recovery, and any judgment recovered must be for double the value of the property, and damages in addition thereto equal to the value of the property." NRS 143.120(3).

double the actual value of the property converted.³ The district court entered an order affirming and adopting the master's recommendations on September 13, 2000.⁴ On October 13, 2000, the Geracis filed the instant appeals from the district court's order.

When our preliminary review of the documents submitted to this court pursuant to NRAP 3(e) revealed two potential jurisdictional defects, we ordered appellants to show cause why these appeals should not be dismissed for lack of jurisdiction. Specifically, it appeared that the order appealed from was not substantively appealable, and that the notice of appeal was prematurely filed.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.⁵ An appeal may be taken from a final judgment in an action or proceeding.⁶ The district court's order is not an appealable final judgment in the guardianship proceedings. A final judgment is one that disposes of the issues presented in the case and leaves nothing for the future consideration of the court.⁷ The

³See 159.091; NRS 143.120; see also NRS 41.1395.

⁴On November 1, 2001, respondent filed a motion requesting leave of this court to correct a clerical error in the order concerning the amount owed to Ronald. See NRCP 60(a). In light of our order dismissing these appeals for lack of jurisdiction, we deny the motion as moot. We also deny the February 7, 2002 motion to substitute parties as moot.

⁵See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

⁶See NRAP 3A(b)(1).

⁷See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

documents before this court do not indicate that the guardianship proceedings terminated with entry of the district court's September 13, 2000 order, thus disposing of all issues presented in the proceedings.

In response to this court's order to show cause, the Geracis contend that the petition filed under NRS 159.091 should be analogized to an independent civil suit, and the district court's order was a final judgment in that "independent" proceeding. We reject this contention. NRS 159.091 specifically provides that the petition be filed "in the guardianship proceeding." It does not provide for a separate civil suit. Thus, the district court's order was not appealable as a final judgment in the guardianship proceedings.

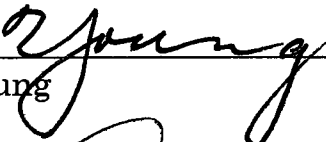
Moreover, no other statute or court rule authorizes an appeal from an order directing the return of money to the wards' estate pursuant to NRS 159.091. The Geracis indicated in the docketing statement that the order is appealable under NRS 155.190(13). NRS 155.190 governs appeals in proceedings arising under Title 12 of NRS, entitled "Wills and Estates of Deceased Persons." NRS 155.190(13) provides: "[A]n appeal may be taken to the supreme court within 30 days after the notice of entry of an order . . . [r]efusing to make any order mentioned in this section or any decision wherein the amount in controversy equals or exceeds, exclusive of costs, \$5,000."


We conclude that NRS 155.190(13) does not provide a right of appeal in this case because it does not apply to guardianship proceedings. The guardianship provisions contained within NRS chapter 159 are outside the scope of Title 12. Even though NRS 159.091 references two procedural statutes contained within Title 12, NRS 143.110 and NRS


143.120, it does not follow that all provisions of Title 12, including NRS 155.190, would therefore apply to guardianship proceedings.

As the district court's order is not appealable, we lack jurisdiction over these appeals.⁸ In light of our decision, it is unnecessary to address the timeliness of the notice of appeal. Accordingly, we

ORDER these appeals DISMISSED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. William O. Voy, District Judge, Family Court Division
David K. Robinson, Settlement Judge
Law Offices of Hamilton D. Moore
Goldsmith & Guymon
Clark County Clerk

⁸Our decision does not preclude the Geracis from filing a petition for extraordinary relief challenging the district court's order. See NRS chapter 34.