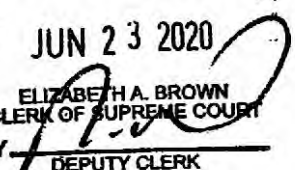


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST OF
PAUL D. BURGAUER REVOCABLE
LIVING TRUST.

No. 78872-COA

STEVEN BURGAUER, AS TRUSTEE
OF PAUL D. BURGAUER MARITAL
TRUST; AND PAUL D. BURGAUER
MARITAL TRUST,
Appellants,
vs.
MARGARET BURGAUER,
Respondent.

FILED
JUN 23 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

Steven Burgauer appeals from a district court order temporarily removing him as trustee and a district court order appointing a temporary trustee. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Respondent Margaret Burgauer argues on appeal that this court lacks appellate jurisdiction over this appeal from the two temporary orders. Appellant Steven Burgauer argues that appeals from the orders are provided for under NRAP 3A(b)(1) and NRS 155.190(1)(h). Having considered the parties' filings, we agree with respondent.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *See Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). An appeal may be taken from a final judgment. NRAP 3A(b)(1). When the challenged district court order does not resolve all of the initial petition's requests, "the order does not resolve all issues before the court and is not a

final judgment for purposes of NRAP 3A(b)(1).” See *In re Guardianship of Wittler*, 135 Nev. 237, 238, 445 P.3d 852, 854 (2019). “This court determines the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called.” *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). “This court has consistently looked past labels in interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to further the rule’s main objective: promoting judicial economy by avoiding the specter of piecemeal appellate review.” *Id.* at 444, 874 P.2d at 733.

Margaret¹ initially petitioned the district court to assume jurisdiction over the trust, remove Steven as trustee, appoint a successor trustee, compel a trust accounting, compel production of trust documents, restore trust payments, and impose personal liability. In the challenged orders, the district court merely temporarily removed Steven as trustee pending an evidentiary hearing and appointed a temporary trustee to manage the trust in the meantime. The district court did not resolve all of the issues Margaret presented in her petition. And the district court orders function as temporary actions pending an evidentiary hearing to discover further information, after which the district court intends to take permanent action. Therefore, we conclude that Steven appeals from two temporary orders, and we do not have jurisdiction over this appeal under NRAP 3A(b)(1).

While Steven argues that we have jurisdiction under NRS 155.190(1)(h), we disagree. NRS 155.190 lists appealable interlocutory probate orders, see *In re Estate of Riddle*, 99 Nev. 632, 633, 668 P.2d 290,

¹We refer to the parties by their first names for clarity.

290 (1983), and subsection (1)(h) states that “an appeal may be taken to the appellate court of competent jurisdiction . . . within 30 days after the notice of entry of an order . . . [i]nstructing or appointing a trustee.”

We review questions of statutory interpretation de novo. *In re Orpheus Trust*, 124 Nev. 170, 174, 179 P.3d 562, 565 (2008). “When a statute is clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of construction.” *In re Estate of Melton*, 128 Nev. 34, 43, 272 P.3d 668, 674 (2012) (quoting *Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010)). Statutory exceptions to the final judgment rule allowing for the appeal of a specified interlocutory order must be strictly construed. See *Yonker Constr., Inc. v. Hulme*, 126 Nev. 590, 592, 248 P.3d 313, 314 (2010). Strict construction, or strict interpretation, is “[a]n interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings.” *Strict Interpretation*, *Black’s Law Dictionary* (11th ed. 2019).

NRS 155.190(1)(h), strictly construed, does not provide for an appeal from an order appointing a temporary trustee. Instead, the statute allows an appeal from an order “appointing a trustee.” NRS 155.190(1)(h). Because we read the statute “without regard for context and other permissible meanings,” *Strict Interpretation*, *Black’s Law Dictionary* (11th ed. 2019), we conclude NRS 155.190(1)(h) provides for an appeal from an order appointing a trustee, not an order appointing a temporary trustee. Therefore, we conclude that NRS 159.190(1)(h) does not confer appellate

jurisdiction in this case.² *See also Wittler*, 135 Nev. at 238, 445 P.3d at 854 (recognizing that temporary orders are typically not appealable). Therefore, based on the foregoing, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
Howard & Howard Attorneys PLLC
Marquis Aurbach Coffing
Hayes Wakayama
Eighth District Court Clerk

²Although we make no comment on the personal jurisdictional issues raised by Steven, we remind the district court that a determination as to whether Nevada courts can exercise personal jurisdiction over Steven requires the court to assess whether he has sufficient minimum contacts with Nevada, and we anticipate that undertaking this analysis will facilitate our future review of any appealable determination issued by the district court.