IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD W. DENNETT AND KAROLEE Y. DENNETT, TRUSTEES OF THE DON & KAROLEE DENNETT FAMILY TRUST,
Appellants,
vs.
THE C. MILLER TRUST, UNDER AGREEMENT DATED 2/26/97; THEODORE C. MILLER, TRUSTEE; THEODORE C. MILLER, INDIVIDUALLY; AND SUSAN K. HARMON, INDIVIDUALLY,
Respondents.

No. 40864

FILED

MAR 0 4 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from district court orders entered on (1) December 19, 2002, that directed appellants to vacate a parcel of residential real property, vacated a temporary restraining order on a foreclosure sale of vacant real property known as the "Dirt Yard," and required respondents to deposit with the court funds from the Dirt Yard's sale that exceed appellants' debt; and (2) February 4, 2003, that denied reconsideration and determined the residential parcel's value.

Respondents have moved to dismiss the appeal, arguing that the appeal from the December order is moot because "the relief sought, an injunction, can no longer be applied by any court to prevent the

foreclosures from occurring," and that the December and February orders are not substantively appealable. Appellants oppose the motion, asserting that the appeal is not moot because "the order denying the injunction and allowing the foreclosure sale will be reversed" if this court "determines that the proper procedure was not followed," and that appellate jurisdiction rests on the denial of an injunction. On September 24, 2003, we deferred ruling on the motion to dismiss, and ordered appellants to show cause why their appeal should not be dismissed because it appeared that they agreed to the sale of the residential parcel and the Dirt Yard, and therefore, are not aggrieved parties with standing to appeal.[1] We further pointed out that the denial of reconsideration is not appealable,[2] and that neither statute nor court rule appears to authorize an interlocutory appeal from the valuation of a foreclosed residence or a directive requiring a creditor to deposit with the district court foreclosure proceeds in excess of a debt.[3] Appellants responded, stating that, although they agreed to the sale of their residence, they "never stipulated" to the

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[1]See NRAP 3A(a); Vinci v. Las Vegas Sands, 115 Nev. 243, 984 P.2d 750 (1999); L. A. & S. L. R. Co. v. Umbaugh, 61 Nev. 214, 123 P.2d 224 (1942).

[2]Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

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

Dirt Yard's sale, and that they are "appealing the December 19, 2002 order vacating the Preliminary Restraining Order on the Dirt Yard."

Initially, we note that an order vacating a temporary restraining order is not appealable unless coupled with the denial of a preliminary injunction.[4] And even if such a denial is implicit in the December order vacating "the Temporary Restraining Order," we conclude that this appeal is moot. A moot appeal is one that presents abstract questions not based on existing facts or rights.[5] Because the Dirt Yard has already been sold pursuant to the deed of trust's power of sale, from which there are no equity or redemption rights,[6] whether the district court should have enjoined the sale is beyond our review.[7] In other words,

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[4]See NRAP 3A(b)(2); Fox v. Morris, 88 Nev. 285, 496 P.2d 158 (1972); Bankers Trust Co. v. Bordwell, 79 Nev. 473, 386 P.2d 732 (1963); accord ContiChem LPG v. Parsons Shipping Co., 229 F.3d 426, 429 (2d Cir. 2000).

[5]NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981).

[6]NRS 107.080(5).

[7]See, e.g., Bunn v. Werner, 210 F.2d 730 (D.C. Cir. 1954); Crim v. Sorrow, 255 S.E.2d 19 (Ga. 1979); Associates Financial Servs. v. Eliser, 468 So. 2d 33 (La. Ct. App. 1985); DuBose v. Gastonia Mut. Sav. & Loan, 286 S.E.2d 617 (N.C. Ct. App. 1982); McConnell v. Flynn Investment Co., 480 S.W.2d 58 (Tex. App. 1972); see also Edwards v. City of Reno, 45 Nev. 135, 143-44, 198 P. 1090, 1091 (1921) (stating the well-established rule requiring dismissal of the appeal when it is taken from the denial of injunctive relief and the act sought to be enjoined has occurred during the appeal).

because there is nothing left below to enjoin, we could not provide any practical relief.[8] Thus, the appeal is moot and must be dismissed.

Accordingly, we grant respondent's motion, and we ORDER this appeal DISMISSED.[9]

Shearing, C.J.

Becker, J.

Gibbons, J.

cc: Hon. Lee A. Gates, District Judge
Leonard I. Gang, Settlement Judge
David J. Winterton & Associates, Ltd.
Gerrard Cox & Larsen
Clark County Clerk

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[8]See NCAA, 97 Nev. at 57, 624 P.2d at 11 (recognizing "the duty of every judicial tribunal . . . to decide actual controversies by a judgment which can be carried into effect").

[9]Consequently, it is not necessary to resolve whether appellants, in fact, agreed to – and, therefore, are not aggrieved by – the foreclosure sale of the Dirt Yard. But, as appellants concede that they agreed to the sale of their residence, they lack standing to challenge the directive to vacate the residence.