

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MARIE NIVINSKI, AS
EXECUTRIX FOR THE ESTATE OF
LEE GLENN ALLRED, DECEASED,
Appellant,
vs.
WELLS FARGO HOME MORTGAGE,
INC., A CALIFORNIA CORPORATION;
RCI MANAGEMENT CORPORATION, A
NEVADA CORPORATION; MTC
FINANCIAL INC., D/B/A TRUSTEE
CORPS; AND FRANK KUJAC,
Respondents.

No. 41140

FILED

AUG 19 2004

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

LISA MARIE NIVINSKI, AS
EXECUTRIX FOR THE ESTATE OF
LEE GLENN ALLRED, DECEASED,
Appellant,
vs.
WELLS FARGO HOME MORTGAGE,
INC., A CALIFORNIA CORPORATION;
RCI MANAGEMENT CORPORATION, A
NEVADA CORPORATION; MTC
FINANCIAL INC., D/B/A TRUSTEE
CORPS; AND FRANK KUJAC,
Respondents.

No. 41184

FRANK KUJAC,
Appellant,
vs.
MTC FINANCIAL INC.,
Respondent.

No. 41232

ORDER TO SHOW CAUSE (NO. 41232), DISMISSING APPEAL (NO. 41140), AND DENYING MOTION TO DISMISS (NOS. 41140 AND 41184)

These are consolidated appeals from various orders and judgments of the district court. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

In Docket No. 41232, appellant Frank Kujac appeals from a district court order granting respondent MTC Financial's motion for summary judgment on Kujac's cross-claims in the underlying case. Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) reveals a potential jurisdictional defect. Specifically, it does not appear that appellant Kujac is an aggrieved party with standing to appeal.¹

In the underlying case, Lisa Marie Nivinski filed suit for conversion of personal property, conflicting claims to real property, trespass, and slander of title, against, among others, Kujac, MTC, Wells Fargo Home Mortgage, and RCI Management, on August 21, 2001. In response, Kujac filed cross-claims for equitable indemnity against Wells Fargo and MTC.² On January 28, 2003, the district court entered an order dismissing Nivinski's claims against Kujac pursuant to NRCP 41(b). MTC subsequently moved for summary judgment on Kujac's cross-claim, and the district court granted MTC's motion in an order entered on February 27, 2003.³ In granting MTC's motion, the district court noted that Kujac himself had stated that his cross-claims against MTC were predicated on Nivinski prevailing in her case against Kujac and were therefore immediately extinguished by operation of law when Nivinski's claims

¹See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

²The various defendants in the underlying case filed a number of cross-claims against one another. Kujac's appeal represents the only challenge to the district court's disposition of these cross-claims.

³The district court's February 27, 2003 order also granted summary judgment in favor of MTC on cross-claims filed against it by Wells Fargo. Kujac's cross-claims against Wells Fargo had been previously dismissed by the district court on November 18, 2002.

against him were dismissed. Since all of Nivinski's claims against Kujac had been dismissed, the district court found that no genuine issue of material fact remained with regard to Kujac's cross-claims against MTC.

On appeal, Kujac challenges the district court order granting MTC's motion for summary judgment on his cross-claims. Kujac, however, does not appear to be an aggrieved party with standing to appeal.⁴ Kujac's indemnity cross-claims against MTC were predicated on Nivinski prevailing on her claims against Kujac. Once Nivinski's claims against Kujac were dismissed, it appears that Kujac's claims against MTC became moot. Therefore, it appears that Kujac is not aggrieved and lacks standing to appeal from the district court's summary judgment order.

Accordingly, Kujac shall have thirty days from the date of this order within which to show cause why the appeal in Docket No. 41232 should not be dismissed for lack of jurisdiction. In responding to this order, Kujac should submit documentation that establishes this court's jurisdiction, including, but not necessarily limited to, points and authorities supporting Kujac's standing to appeal the district court's judgment. We caution Kujac that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. Respondent may file any reply within ten days from the date that appellant's response is served.

In Docket No. 41140, Nivinski, the appellant, challenges a district court order dismissing her claims against respondents Kujac and RCI pursuant to NRCP 41(b), and the district court's findings of fact and conclusions of law in favor of respondents Wells Fargo and MTC. Our preliminary review of the docketing statement and the documents

⁴See NRAP 3A(a); Ginsburg, 110 Nev. 440, 874 P.2d 729.

submitted to this court pursuant to NRAP 3(e) indicates that the notice of appeal in Docket No. 41140 was premature. Specifically, it appears that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties, and that the district court had not certified the orders challenged by Nivinski as final pursuant to NRCP 54(b) at the time she filed her notice of appeal.⁵

Nivinski filed her notice of appeal on March 21, 2003. At that time, the district court had not entered a final written judgment disposing of her claims against any of the parties except MTC. Nivinski's claims against RCI, Kujac, and Wells Fargo remained unresolved until the district court entered a judgment in favor of RCI and Kujac and a separate judgment in favor of Wells Fargo on March 26, 2003. Because final written judgments had not been entered when Nivinski filed her notice of appeal in Docket No. 41140, that appeal is untimely.⁶ Accordingly, we dismiss the appeal in Docket No. 41140. As discussed below, however, Nivinski has perfected an appeal in Docket. No. 41184.

Finally, Wells Fargo has filed a motion to dismiss the appeals in Docket Nos. 41140 and 41184 as to Wells Fargo. In light of our dismissal of Docket No. 41140 in this order, we deny as moot the portion of Wells Fargo's motion seeking to dismiss that appeal. Therefore, Wells Fargo's motion to dismiss will be addressed only to the extent that it seeks dismissal of Docket No. 41184.

⁵Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

⁶See NRAP 4(a)(1); Lee, 116 Nev. 424, 996 P.2d 416; KDI, 107 Nev. 340, 810 P.2d 1217; Rae, 95 Nev. 920, 605 P.2d 96.


The original notice of appeal in Docket No. 41184, which Nivinski filed on April 1, 2003, challenged only the judgment in favor of Kujac and RCI. Although Nivinski refers to this as a “special order after final judgment,” this judgment is actually the final written judgment in favor of Kujac and RCI, entered along with a separate final written judgment in favor of Wells Fargo, on March 26, 2003. Nivinski subsequently filed an amended notice of appeal on May 9, 2003, to also include the district court order entering a judgment in favor of Wells Fargo, the district court order entering a judgment in favor of MTC, the district court's findings of fact and conclusions of law in favor of Wells Fargo and MTC, and the district court order dismissing Nivinski's claims against Kujac and RCI pursuant to NRCP 41(b).

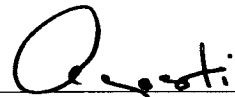
Wells Fargo argues that since it was not included in the order challenged in Nivinski's original notice of appeal, this first notice of appeal was ineffective to perfect an appeal against it. It further argues that although the amended notice of appeal does challenge the judgment in favor of Wells Fargo, the amended notice of appeal is ineffective because it was filed more than thirty days after the notice of entry of the judgment in favor of Wells Fargo was served.

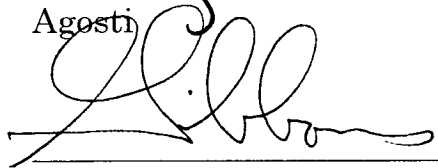
Here, the two March 26, 2003 orders, one in favor of Kujac and RCI and the other in favor of Wells Fargo, resolved the remaining claims in Nivinski's action. Although the initial notice of appeal in Docket No. 41184 did not designate both judgments as being appealed from, we nonetheless construe Nivinski's appeal as being taken from both the judgment in favor of Kujac and RCI entered on March 26, 2003, and the

judgment in favor of Wells Fargo entered on the same day.⁷ Accordingly, we deny Wells Fargo's motion to dismiss the appeal in Docket No. 41184.

It is so ORDERED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Goedert & Michaels
Beesley, Peck & Matteoni, Ltd.
Molof & Vohl
Robison Belaustegui Sharp & Low
Washoe District Court Clerk

⁷Forman v. Eagle Thrifty Drugs & Markets, 89 Nev 533, 516 P.2d 1234 (1973), rev'd on other grounds by Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002). We note also that interlocutory orders that are not independently appealable can generally be challenged in an appeal from the final judgment. See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).