IN THE SUPREME COURT OF THE STATE OF NEVADA

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EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC,

Appellants/Cross Respondents.

vs.

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive,

Respondents/Cross-Appellants.

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive,

Respondents.

Supreme Court Case

No. 77678 consolidated with No. 78176

APPELLANTS/CROSS-RESPONDENTS' REPLY TO RESPONDENTS/CROSS APPELLANTS' RESPONSE TO THE ORDER TO SHOW CAUSE

A clear and fatal jurisdictional issue exists with respondents/cross-appellants' cross-appeal of the district court's decision and order on motion to adjudicate lien in Docket No. 77678. As this Court stated in the Order to Show Cause (OSC) at page 2, respondents/cross-appellants were not named parties to case A-16-738444-C, the case in which the district court's decision and order on motion to adjudicate lien originated from. Thus, pursuant to NRAP 3A(a) and *Massi v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995), respondents/cross-appellants do not have standing to bring their cross-appeal. Therefore, jurisdiction is lacking and the cross-appeal should be dismissed entirely.

Respondents/cross-appellants raised three basic, though unpersuasive, arguments in their response. First, that this case (the lien adjudication matter) is different from other cases (i.e. lien adjudication matters), which it isn't. Second, that to dismiss their cross-appeal will result in an asymmetrical proceeding, which it shouldn't. Third, that *Settlelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 197 P.3d 1051 (2008), provides a path to standing and jurisdiction, which it doesn't.

There is nothing that is materially different in this case (Docket No. 77678) than other similarly situated cases appealed to this Court. Primarily, appellants/cross-respondents are financially aggrieved parties due to the conduct of another (their attorneys, respondents/cross-appellants) and the content of a final order from a district court judge (the district court's decision and order on motion to adjudicate lien). While the factual record outlined in the appeal of appellants/cross-respondents may not be garden-variety, neither the basics of this case nor the nature of their appeal stand out as anything other than ordinary, at least for this Court. As such, there isn't a basis to give special treatment to a cross-appeal with a fatal jurisdictional defect.

Dismissing respondents/cross-appellants' cross-appeal in whole will also not result in an asymmetrical appeal or result. Even if it did, that's irrelevant to the right to file an appeal as set forth in NRAP 3A(a), as only those allowed to appeal a decision and order should be able to do so. That's what keeps things in proper balance, or in symmetry. In declaring who can file a notice of appeal pursuant to NRAP 3A(a), this Court has "...consistently held that only an aggrieved party may appeal from an adverse decision." *Massi v. Bellmyre,* 111 Nev. 1520-21, 908 P.2d 705-706 (1996). Respondents/cross-appellants are not aggrieved "parties" under any definition of Nevada appellate law.

It is undisputed that respondents/cross-appellants were not named parties in case A-16-738444-C, the case in which the district court's decision and order on motion to adjudicate lien originated. Rather, they were appellants/cross-respondents' attorneys in a piece of flood litigation. Appellants/cross-respondents were parties, but respondents/cross-appellants were never named, or acted, or appointed to any other calling or position than what they were and are: attorneys for named parties. Since respondents/cross-appellants were neither aggrieved nor named parties in that litigation, they have no standing to file a cross-appeal. Thus, there is no jurisdiction to entertain their defective cross-appeal.

Finally, there is nothing in *Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 197 P.3d 1051 (2008), that provides respondents/cross-appellants with a path to standing or jurisdiction for their cross-appeal. In *Settelmeyer*, the "unnamed receiver" referenced in respondents/cross-appellants' response was more than a mere unnamed receiver. Rather, he was a person who was appointed in a garnishment proceeding to serve as the receiver for the garnishee defendant. Because of that, the Court determined that the order he appealed from was appealable by the receiver under NRS 31.460 and NRAP 3A.

As basically acknowledged by respondents/cross-appellants in their response to the OSC, their remedy as a non-party with any issue they may have with the district court's decision and order on motion to adjudicate lien in Docket No.

77678 was through an extraordinary writ. It was always their only path. Whether the doctrine of laches should preclude that remedy nearly eleven months after the amended decision and order was filed will be left for another day and decision. However, now is the time to dismiss in whole respondents/cross-appellants' cross-appeal, as they lack standing. Jurisdiction, therefore, does not exist.

DATED this 11th day of October, 2019.

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CERTIFICATE OF SERVICE

Pursuant to the provisions of NRAP, I certify that on the 11th day of October, 2019, I served **APPELLANTS/CROSS RESPONDENTS' REPLY TO RESPONDENTS/CROSS APPLEEANTS' RESPONSE TO THE ORDER TO SHOW CAUSE** on all parties to this action, electronically, as follows:

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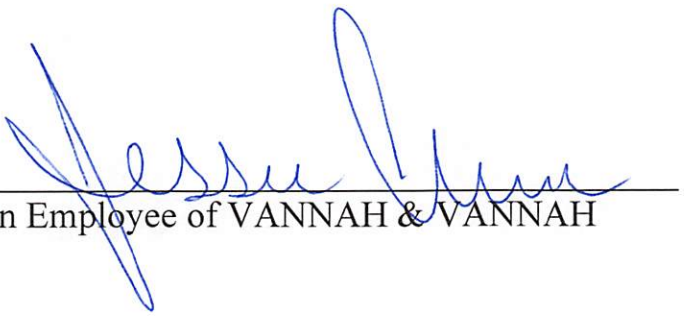

An Employee of VANNAH & VANNAH