

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 IN THE MATTER OF THE ESTATE OF:
4 DENNIS JOHN CARVER, DECEASED.

No. 81447

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Elizabeth A. Brown
Clerk of Supreme Court

5 COLONIAL REAL ESTATE
6 PARTNERSHIP, LTD.; AND JOHN
7 HOULIHAN,

8 Appellants,

9 vs.

10 RHONDA MORGAN, PERSONAL
11 REPRESENTATIVE OF THE ESTATE
12 DENNIS JOHN CARVER,

13 Respondent.

14 **APPELLANT’S RESPONSE TO ORDER TO SHOW CAUSE**

15 COMES NOW, Petitioner COLONIAL REAL ESTATE PARTNERSHIP, LTD., a Nevada
16 Corporation, (“Colonial”) by and through its attorney of record Leo P. Flangas, Esq., of the
17 FLANGAS LAW FIRM, LTD., and hereby files this Response to the Supreme Court’s February
18 12, 2021 Order to Show Cause concerning Appellants’ request to reopen probate proceedings in
19 the estate of DENNIS JOHN CARVER, (“Carver”) the decedent and to order an evidentiary
20 hearing.

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22 **LEGAL STANDARD**

23 Appellants assert that this Court has jurisdiction to consider this appeal under NRS §
24 155.190(1)(n), or under NRAP 3A(b)(1) because the order is a final judgment.

25 NRS § 155.190(1)(n) provides:
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1 Except as otherwise provided in subsection 2, in addition to any order from which
2 an appeal is expressly permitted by this title, an appeal may be taken to the appellate
3 court of competent jurisdiction pursuant to the rules fixed by the Supreme Court
4 pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after
the notice of entry of an order [...] [m]aking any decision wherein the amount in
controversy equals or exceeds, exclusive of costs, \$10,000.

5 *Id.*

6 NRAP 3A(b)(1) states “[a]n appeal may be taken from the following judgments and
7 orders of a district court in a civil action [...] [a] final judgment entered in an action or proceeding
8 commenced in the court in which the judgment is rendered.” *Id.*

10 INTRODUCTION

11 This is an appeal from a district court order denying a petition for an order to show cause
12 why the estate should not be reopened for creditors to submit proof of claims and an accounting of
13 the estate assets. In its Order to Show Cause, the Supreme Court stated that it’s initial review of the
14 docketing statement and documents revealed a potential jurisdictional defect. The Court further
15 stated that it was not clear that the challenged order is substantively appealable.

16 The order to show cause should not be dismissed for lack of jurisdiction herein because it
17 is not a final judgment notwithstanding the challenged order is appealable pursuant to the express
18 language of NRS § 155.190 which confers jurisdiction.

19 The docketing statement has been amended to reflect the correct basis for jurisdiction.

22 LEGAL ARGUMENT

23 A. THE CHALLENGED ORDER IS APPEALABLE

24 “[A] final judgment is one that disposes of all the issues presented in the case, and leaves
25 nothing for the future consideration of the court, except for post-judgment issues such as attorney's
26 fees and costs.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (Nev. 2000).

1 In this case, a final judgment was entered on May 10, 2019, when administration of the estate
2 ended.

3 This Court has stated that "this court determines the finality of an order or judgment by
4 looking to what the order or judgment actually *does*, not what it is called." *Lee v. GNLV Corp.*, 116
5 Nev. 424, 427, 996 P.2d 416, 418 (Nev. 2000) (emphasis by the Court), quoting *Valley Bank of*
6 *Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (Nev. 1994). "[T]his court has
7 consistently determined the finality of an order or judgment by what it *substantively*
8 *accomplished*." *Id.* at 444-45 (emphasis added), citing *State Taxicab Authority v. Greenspun*, 109
9 Nev. 1022, 1025, 862 P.2d 423, 425 (Nev. 1993). See also *Bally's Grand Hotel v. Reeves*, 112
10 Nev. 1487, 1488, 929 P.2d 936, 937 (Nev. 1996) ("This court has consistently looked past labels in
11 interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to
12 further the rule's main objective: promoting judicial economy by avoiding the specter of piecemeal
13 appellate review.") (quoting *Valley Bank of Nevada v. Ginsburg*, at 444.

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16 "More precisely, a final, appealable judgment is "one that disposes of the issues presented
17 in the case . . . and leaves nothing for the future consideration of the court." *Alper v. Posin*, 77
18 Nev. 328, 330, 363 P.2d 502, 503 (Nev. 1961). "[W]hether the district court's decision is entitled a
19 'judgment' or an 'order' is not dispositive in determining whether it may be appealed; what is
20 dispositive is whether the decision is final." *Lee v. GNLV Corp.*, at 427.

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22 In this case, the Estate's Personal Representative, Rhonda Morgan, filed a Petition for Final
23 Distribution on April 8, 2019 in the Eighth Judicial District Court of Clark County, Nevada. On
24 May 15, 2020, the Court denied Appellants' Order to Show Cause Why Estate Should not be Re-
25 opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets, citing the
26 legal basis outlined in the Estate's Sur-Reply in support of Objection to Petition. In that document,
27 the Estate states that "reopening the Estate would be futile *because the estate was closed* and all
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1 assets were distributed to beneficiaries.” [Estate’s Sur-Reply in Support of Objection to Petition for
2 an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of
3 Claims and Accounting of the Estate Assets, at p. 8 (emphasis added) (“[R]eopening the estate
4 would be futile because estate assets have been distributed and there are no funds to satisfy the
5 creditor’s claim.”)].

6
7 Under NRS 155.190 denial of a Motion to Reopen an estate is statutorily appealable.⁶
8 motion.

9 **B. THE CHALLENGED ORDER IS APPEALABLE PURSUANT TO NRS § 155.190**

10 “The right to appeal is statutory; where no statute or court rule provides for an appeal, no
11 right to appeal exists.” *State Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1024-25, 862 P.2d 423,
12 424 (Nev. 1993). See *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851
13 (2013) (this court “may only consider appeals authorized by statute or court rule).

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15 NRS § 155.190(1)(n) provides that an appeal may be taken to the appellate court within
16 30 days after the notice of entry of an order making any decision wherein the amount in
17 controversy equals or exceeds, exclusive of costs, \$10,000. *Id.* Such is the case here, where
18 Appellants seek the return of \$121,851.64 paid to Decedent for plumbing and related services for
19 real property located at 3775 E. Sahara Ave., Las Vegas, NV 89104. No work was ever
20 performed, and no funds were returned to Appellants.

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1 **CONCLUSION**

2 Based on the above, Appellants asks this Court to reopen the probate and order an
3 evidentiary hearing on this matter.

4 DATED this 10th day of March 2021.
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6
7 /s/ Leo Flangas

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th of March 2021, service of the foregoing APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE was made by the Supreme Court's electronic filing system to the email address registered to:

/s/ Natasha Smith

An employee of the law office of
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