

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>CLARK NMSD, LLC, D/B/A THE SANCTUARY</p> <p>Appellant,</p> <p>vs.</p> <p>JENNIFER M. GOLDSTEIN, AN INDIVIDUAL,</p> <p>Respondent,</p>	<p>Supreme Court No. 84623</p> <p>District Court Case No. A728510</p> <p>Electronically Filed Aug 26 2022 01:52 p.m. Elizabeth A. Brown Clerk of Supreme Court</p>
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RENEWED MOTION TO DISMISS APPEAL

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Attorneys for Plaintiff Jennifer M. Goldstein

Comes now Respondent, Jennifer M. Goldstein (“Goldstein”), by and through her attorneys of record, Dickinson Wright PLLC, and renews her request that this Court dismiss Clark NMSD, LLC, d/b/a The Sanctuary’s (“Clark”) appeal (“Appeal”) on the basis that Clark does not have standing to appeal the District Court’s Order Denying Clark’s Application/Petition Pursuant to NRS 31.070(5) and Request to Prohibit Goldstein from any further Collection Activity without Court Approval (the “Order”). This Motion is made pursuant to NRAP 3A(a).

PRELIMINARY STATEMENT

Goldstein initially filed her Motion to Dismiss Appeal (the “Motion to Dismiss”) on May 12, 2022, on the basis that Clark is not a “party” pursuant to NRAP 3A(a), and this court correspondingly does not have jurisdiction over this appeal. (*See generally* Mot. to Dismiss, on file herein). On May 13, 2022, this Court denied Goldstein’s Motion to Dismiss “without prejudice to [Goldstein’s] right to renew the [M]otion, if necessary, upon completion of settlement proceedings.” (Ord. Denying Mot. to Dismiss, on file herein).

On August 8, 2022, Settlement Judge Janet Trost filed her Settlement Program Status Report, notifying this Court that “[a] mediation session was held on August 8, 2022,” and “[t]he parties were unable to agree to a settlement of this matter.” (Settlement Program Status Report, on file herein). This Court entered its

Order Reinstating Briefing on August 9, 2022. (*See* Ord. Reinstating Briefing, on file herein). Now, pursuant to this Court’s Order Denying the Motion to Dismiss, and subsequent Order Reinstating Briefing, Goldstein renews her Motion to Dismiss, and respectfully requests that this Court dismiss this appeal.

INTRODUCTION

NRAP 3A(a) provides: “A *party* who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.” (emphasis added). The only issues relevant to the instant Motion are whether Clark qualifies as a “party” pursuant to NRAP 3A(a), and whether this Court has jurisdiction to hear Clark’s direct Appeal from the Order. As fully explained herein, under this Court’s settled precedent, Clark is not a “party” pursuant to NRAP 3A(a), and Clark’s Appeal must therefore be dismissed for lack of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

After other members of NuVeda, LLC, which is a party below but not a party to this Appeal, voted to expulse respondent Jennifer M. Goldstein as a member, the parties participated in private arbitration to determine the fair market value of Goldstein’s interest in NuVeda. *NuVeda, LLC v. Goldstein*, 473 P.3d 1047 (Nev. 2020) (unpublished). The arbitrator assessed Goldstein’s interest at more than \$2 million and awarded her attorney fees, costs, and prejudgment interest.

NuVeda filed a motion with the district court to vacate the arbitration award. *Id.* The district court denied the motion and instead entered judgment confirming the arbitration award pursuant to NRS 38.243(1). *Id.* This Court affirmed the District Court’s Order affirming the arbitration award. *Id.*¹

During post-judgment collection proceedings, on March 11, 2022, the District Court entered its Order, wherein it determined that the appellant in the current appeal, Clark, “ha[d] failed to comply with the requirements under NRS 31.070 and ha[d] not established that it has any relationship with or interest in NuVeda or the property at issue in the Application.” (**Exhibit 1**, Ord. at ¶ 2). As made clear from the Order, Clark is not a party to the District Court action below. (*Id.* at 1 (characterizing Clark as “third-party”); *Id.* (caption)).

ARGUMENT

“This is a court of limited appellate jurisdiction,” *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994), and a motion to dismiss is properly granted where the court lacks jurisdiction. *Cole v. Shafer (In re Estate of Miller)*, 111 Nev. 1, 888 P.2d 433 (Nev. 1995). “[T]his [C]ourt has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved *party*.”

¹ This is the second time Goldstein has been before this Court in relation to this dispute. Specifically, this Court previously affirmed the District Court’s Order denying NuVeda’s Motion to Vacate Arbitration Award, and confirming the subject arbitration award pursuant to NRS 38.243(1). *NuVeda, LLC v. Goldstein*, 473 P.3d 1047 (Nev. 2020).

Ginsburg, 110 Nev. at 446, 874 P.2d at 734 (emphasis in original); *see also* NRAP 3A(a) (“A **party** who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.”) (emphasis added).

“This court has consistently taken a restrictive view of those persons or entities that have standing to appeal as parties.” *Id.* In fact, even “aggrieved” nonparties do not have standing to appeal. *See id.*; *Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995). A person who is not a “party” within the meaning of NRAP 3A(a) has no standing to appeal. *Ginsburg*, 110 Nev. at 448, 874 P.2d at 735. Finally, this Court has “conclude[d] that, in Nevada, a person or entity is not a party within the meaning of NRAP 3A(a) unless that person or entity has been served with process, appeared in the court below *and* has been named as a party of record in the trial court. *Id.* (emphasis in original).

Here, it is undisputed that Clark has not been named as a party of record in the District Court action below and, under this Court’s settled precedent, has no standing to appeal the District Court’s Order.

CONCLUSION

Based on the foregoing, Goldstein respectfully requests that the Court dismiss the Appeal, as Clark does not have standing pursuant to NRAP 3A(a).

DATED this 26th day of August, 2022.

DICKINSON WRIGHT, PLLC

/s/ Brian R. Irvine

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Attorneys for Plaintiff Jennifer M. Goldstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of DICKINSON WRIGHT PLLC, and that on this date, pursuant to NRAP 25(d), I am serving a true and correct copy of the forgoing **RENEWED MOTION TO DISMISS APPEAL** on the parties as set forth below via Electronic Service through the Nevada Supreme Court's E-Filing System addressed as follows:

Mitchell Stipp, Esq.
LAW OFFICE OF MITCHELL STIPP
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
mstipp@stipplaw.com

/s/ Angela M. Shoults

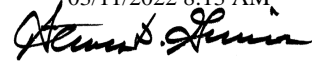
An Employee of Dickinson Wright PLLC

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	# OF PAGES
1	Findings of Fact, Conclusions of Law and Order Denying Application/Petition Pursuant to Prohibit Goldstein From any Further Collection Activity Without Court Approval	10

EXHIBIT “1”

EXHIBIT “1”



CLERK OF THE COURT

FFCO

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Attorneys for Plaintiff Jennifer M. Goldstein

DISTRICT COURT

CLARK COUNTY, NEVADA

NUVEDA, LLC, a Nevada limited liability company, SHANE M. TERRY, a Nevada resident; and JENNIFER M. GOLDSTEIN, a Nevada resident,

Plaintiffs,

vs.

PEJMAN BADY; POUYA MOHAJER; DOE Individuals I-X and ROE Entities I-X, inclusive,

Defendants.

Case No.: A-15-728510-B
Dept. No.: 31

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
DENYING APPLICATION/PETITION
PURSUANT TO PROHIBIT
GOLDSTEIN FROM ANY FURTHER
COLLECTION ACTIVITY WITHOUT
COURT APPROVAL**

Hearing Date: October 5, 2021

This matter having come on for hearing related to Defendant NuVeda, LLC (“NuVeda”) and third-party Clark NMSD, LLC, a Nevada limited liability company d/b/a The Sanctuary’s (“Clark”) Application/Petition Pursuant to Prohibit Goldstein From Any Further Collection Activity Without Court Approval (the “Application”) before the Court on October 5, 2021. Plaintiff Jennifer M. Goldstein (“Goldstein”) appeared by and through her counsel of record Brian Irvine of the law firm of Dickinson Wright PLLC; and NuVeda appeared by and through its counsel of record Mitchell Stipp of the Law Office of Mitchell Stipp; the Court having read and

1 considered the pleadings filed by the parties; the Court having considered the oral and written
2 arguments of counsel, and with the intent of deciding the issues before the Court related to the
3 Application, the Court finds and orders as follows:

4 1. To avail itself of any of the remedies afforded by NRS 31.070, Clark must serve
5 the constable with “a written claim verified by the person’s oath or that of the person’s agent,
6 setting out the person’s right to the possession” of the property at issue.

7 2. Clark has failed to comply with the requirements under NRS 31.070 and has not
8 established that it has any relationship with or interest in NuVeda or the property at issue in the
9 Application.

10 3. Moreover, as already held by this Court in its Order denying NuVeda’s Motion to
11 Quash Writs of Execution, NuVeda lacks “standing to assert exemptions on behalf of third
12 parties.” *Ciras, LLC v. Ziegler*, No. 2:10-CV-02019-RLH, 2011 WL 1979857, at *2 (D. Nev.
13 May 20, 2011).

14 4. NuVeda and Clark are thus not entitled to any relief under NRS 31.070.

15 5. In addition, the Application requests that the Court “require Goldstein to file a
16 motion with notice to and an opportunity to be heard by NuVeda for approval of any further
17 collection activity.” Although the Application cites no legal authority for this request, under
18 NRCP 62(b), a “court may stay execution on a judgment – or any proceedings to enforce it –
19 pending disposition of” (1) a motion under Rule 50 for judgment as a matter of law; (2) a motion
20 to amend findings under Rule 52(b); (3) a motion for a new trial or to amend judgment under
21 Rule 59, or (4) a motion for relief from judgment under Rule 60. None of the motions
22 enumerated under NRCP 62(b) are currently pending, and therefore neither NuVeda nor Clark
23 may obtain relief under NRCP 62(b).

24
25 **ORDER**

26 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the
27 Application is **DENIED**.
28

1 IT IS SO ORDERED.

Dated this 11th day of March, 2022



DD8 E60 D777 8DD6

Joanna S. Kishner
District Court Judge

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3
4
5 *Respectfully submitted by:*

6 DICKINSON WRIGHT PLLC

7 */s/ Brian R. Irvine*

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15 *Attorneys for Plaintiff Jennifer M. Goldstein*

Approved as to form and content:

LAW OFFICE OF MITCHELL STIPP

7 */s/ Mitchell Stipp*

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13 *Attorneys for NuVeda, LLC*

16 4886-3782-8372 v1 [88728-1]

From: [Mitchell Stipp](#)
To: [Brian R. Irvine](#)
Subject: Re: FW: EXTERNAL: Eighth Judicial District Court - Proposed Order Returned
Date: Thursday, March 10, 2022 4:06:25 PM

Changes are fine.



Mitchell Stipp

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A: 1180 N. Town Center Drive, Suite 100, Las Vegas, Nevada 89144

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On Thu, Mar 10, 2022 at 10:25 AM Brian R. Irvine <BIrvine@dickinson-wright.com> wrote:

Mitchell

Thanks for the email. I think your markup adequately addresses the reasons why the NRS Chapter 31 relief sought by Clark is denied, but does not provide an explanation why the relief is denied as to NuVeda, so I have added the standing paragraph back in. Also, your markup does not address the reasons for the denial of the request that the Court require "Goldstein to file a motion with notice to and an opportunity to be heard by NuVeda for approval of any further collection activity." I also included a paragraph explaining the denial of that relief. Please let me know if I have your authority to submit the attached proposed Order to the Court with those changes.

Thanks,

Brian

From: Mitchell Stipp <mstipp@stipplaw.com>
Sent: Wednesday, March 9, 2022 7:05 PM
To: Brian R. Irvine <BIrvine@dickinson-wright.com>
Subject: Re: FW: EXTERNAL: Eighth Judicial District Court - Proposed Order Returned

Thanks Brian. I am sorry that happened.

Attached is your revised draft in tracked changes with my comments for your review and approval.



Mitchell Stipp

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On Wed, Mar 9, 2022 at 4:10 PM Brian R. Irvine <BIrvine@dickinson-wright.com> wrote:

Mitchell-

I submitted the bare-bones Order you approved to Department 31 today, but the Order was rejected because "The order does not comply with the rules as it gives no basis for the Court's ruling." See the email from the Court below. I have attached the proposed order that I sent you in October of last year and again last month, which tracks the reasons set forth in our opposition why the motion should be denied. Do I have your authority to submit the attached? Please respond ASAP, as the Court has issued an order to show cause.

Thanks,

Brian

Brian R. Irvine Member

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Brian R. Irvine Member

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From: Mina Reel <WReel@dickinson-wright.com>
Sent: Wednesday, March 9, 2022 3:57 PM
To: Brian R. Irvine <Blrvine@dickinson-wright.com>
Subject: FW: EXTERNAL: Eighth Judicial District Court - Proposed Order Returned

From: NoReply@clarkcountycourts.us <NoReply@clarkcountycourts.us>
Sent: Wednesday, March 9, 2022 3:37 PM
To: Mina Reel <WReel@dickinson-wright.com>
Subject: EXTERNAL: Eighth Judicial District Court - Proposed Order Returned

A-15-728510-B - FFCO - Nuveda LLC et al v. Pejman Bady et al.

Your proposed order or document requiring a judge's signature to the court has been returned for the following reason(s): The order does not comply with the rules as it gives no basis for the Court's ruling.

Mina Reel Legal Assistant

100 West Liberty Street Phone 775-343-7509
Suite 940 Fax 844-670-6009
Reno NV 89501-1991 Email MReel@dickinsonwright.com

[cid:image001.jpg@01D833CF.8AE06C00](#)



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Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Nuveda, LLC , Plaintiff(s)

CASE NO: A-15-728510-B

7 vs.

DEPT. NO. Department 31

8 Pejman Bady, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 3/11/2022

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