

IN THE SUPREME COURT OF THE STATE OF NEVADA

FLEETWOOD CORPORATION, A
NEVADA CORPORATION,
Appellant,
vs.
THE DOROTHY TOWNE TRUST,
Respondent.

No. 60866

FILED

JAN 29 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to enforce a judgment or, in the alternative, a petition for further relief on declaratory judgment. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

This matter arose from a dispute over the terms of a geothermal lease entered into between appellant Fleetwood Corporation and Dorothy Towne, the owner of the property that was the subject of the lease.¹ The property straddles U.S. Highway 395 and was divided into several parcels. The parties have always collectively referred to parcels one through five as the Westside properties, and parcels six through nine as the Eastside properties. After many years of litigation, the case proceeded to bench trial on the issue of whether the lease should be terminated because Fleetwood had violated its terms by failing to pay all of the taxes on the leased property. Fleetwood argued that the lease had been orally modified such that Towne was to pay the property taxes on the

¹Dorothy Towne died in 2003 prior to the filing of this appeal. Respondent on appeal is the Dorothy Towne Trust (the Trust).

Eastside properties, which she had been doing since the inception of the lease.

At the conclusion of the bench trial, the district court entered a written order finding, among other things, that Fleetwood's claim of an oral modification of the geothermal lease was barred by the statute of frauds. The court also found that the terms of the lease were controlling, and therefore, Fleetwood was required under the lease to pay all of the taxes on the leased property. However, the court found that non-payment of the taxes did not amount to a default because, prior to her death, Towne had always paid the taxes on the Eastside properties and only once demanded payment from Fleetwood. Therefore, it determined that equity demanded the geothermal lease not be terminated for the lack of payment of those taxes. The district court further found that Fleetwood was required to reimburse the Trust for taxes it paid on the Eastside properties since 2004 because that is when the Trust began demanding payment of the taxes from Fleetwood.

Fleetwood also argued that if it was in fact required to reimburse the Trust for the amount of taxes it paid from 2004 to the present, then it should also be entitled to receive any income that the Trust received from the Eastside properties. Fleetwood reasoned that if not for the oral modification, it would have asserted a right to that income under the geothermal lease. The district court rejected this argument stating that Fleetwood failed to prove an entitlement to that income sufficient to warrant offset, and that offset would be inequitable because Fleetwood had never demanded such income from the Trust.

The district court entered a final judgment stating that "Fleetwood is entitled to the surface resources of the parcels that are the

subject of the . . . Lease.” It further stated that “[a]lthough Fleetwood is entitled to the surface resources identified in the . . . Lease, Fleetwood is not entitled to offset any damages that accrue to the Trust for the Eastside Taxes with the income that the Trust has received from the surface resources from 2004 through 2010.” Neither party timely appealed from this judgment.

Following the entry of the final judgment, Fleetwood sent the Trust a letter demanding that the Trust turn over all income received by the Trust from the surface uses of the Eastside properties. The Trust refused because “surface uses,” like the income it received from billboard and house rentals, “are not the ‘surface resources’ as described in the Judgment.” Fleetwood then filed a motion to enforce the judgment. The district court denied the motion, quoting from its trial order wherein it found that the “Lease provides that ‘surface resources’ were granted to Fleetwood, and that all non-granted rights were retained [by the Trust]. Thus, those surface rights that are not ‘resources’ were retained by Dorothy Towne, and are now retained by The Trust.” The district court defined “[s]urface resources” as “vegetative organic resources” before determining that Fleetwood was entitled to “income generated by the natural surface resources,” like pasture grazing, but the Trust was entitled to “income derived from the rental of houses, buildings, and billboards.”

Fleetwood appealed this post-judgment order challenging the district court’s interpretation of the lease. After the notice of appeal was filed, the Trust moved to dismiss the appeal for lack of jurisdiction. The Trust argues that Fleetwood was required to appeal from the final

judgment, and thus, this court does not have jurisdiction to hear the appeal.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). Pursuant to NRAP 3A(b)(8), an appeal may be taken from any “special order entered after final judgment.” To qualify as an appealable order under NRAP 3A(b)(8), the order must be “an order affecting the rights of some party to the action, growing out of the judgment previously entered.” *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

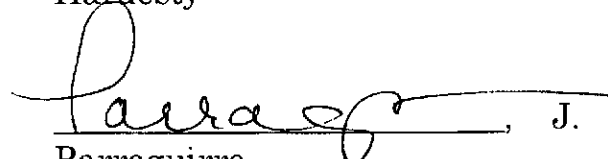
We conclude that we have jurisdiction to hear Fleetwood’s appeal. In the final judgment, the district court concluded that Fleetwood was “entitled to the surface resources of the parcels that are the subject of the . . . Lease,” but that Fleetwood could not offset the back taxes it owed with past income received by the Trust. Yet, the post-judgment order appears contradictory to the final judgment in that the district court denied Fleetwood its right to income from the surface resources based on the court’s interpretation that “surface resources” referred only to “vegetative organic resources,” a limitation which was not stated in the final judgment.² Therefore, because the post-judgment order alters rights granted to Fleetwood under the final judgment, we deny the Trust’s motion to dismiss this appeal.

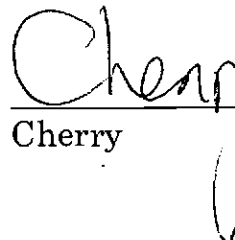
²The district court also explicitly determined in its post-judgment order that Fleetwood was entitled to income from pasture grazing, but it nonetheless denied Fleetwood’s request to enforce the judgment in its entirety despite the fact that Fleetwood’s motion included a request for income from pasture grazing.

Since the district court's post-judgment order deviates from the final judgment and thus alters rights previously granted to Fleetwood under the final judgment, we reverse the post-judgment order and remand this matter to the district court. On remand, the district court is directed to reconcile the contradictory conclusions between the final judgment, which granted Fleetwood income from "surface resources," and the post-judgment order, which denied Fleetwood's motion to enforce the judgment in its entirety based on its interpretation of "surface resources" not contained in the final judgment. And, in doing so, the district court should also clarify the interpretation of "surface resources" in the lease.

Accordingly, for the reasons set forth above, we REVERSE the post-judgment order and REMAND this matter to the district court for further proceedings consistent with this order.

 J.
Hardesty

 J.
Parraguirre

 J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Margaret M. Crowley, Settlement Judge
McDonald Carano Wilson LLP/Reno
Parsons Behle & Latimer/Reno
Washoe District Court Clerk