

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VA AFFORDABLE HOMES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SEATTLE MORTGAGE COMPANY, A
WASHINGTON CORPORATION,

Respondent.

VA AFFORDABLE HOMES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SEATTLE MORTGAGE COMPANY, A
WASHINGTON CORPORATION,

Respondent.

VA AFFORDABLE HOMES, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SEATTLE MORTGAGE COMPANY, A
WASHINGTON CORPORATION,

Respondent.

No. 80601-COA

FILED

NOV 04 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 80945-COA

No. 81175-COA

ORDER REVERSING (DOCKET NO. 80601-COA), VACATING (DOCKET NO. 80945-COA), DISMISSING (DOCKET NO. 81175-COA), AND REMANDING

VA Affordable Homes, LLC (VA Affordable), appeals from a district court order granting summary judgment in a real property matter, a post-judgment order awarding attorney fees and costs, and a subsequent order consolidating the previous two. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

In 2007, Glenn and Dorothy Gruenewald obtained a reverse mortgage loan and purportedly executed a deed of trust against their home as security, naming respondent Seattle Mortgage Company (SMC) as the beneficiary.¹ According to SMC, due to a clerical error following the transaction, the original deed of trust was misplaced and never recorded. Years later, after Glenn's passing, Dorothy and her daughter, Judy Pheneger, met with Jeff Veasley, who had expressed interest in purchasing the subject property. They informed Veasley of the reverse mortgage loan from SMC before ultimately reaching an agreement to sell him the property. In exchange for the property, Veasley paid Dorothy \$500 and agreed to pay the balance of the reverse mortgage loan. Veasley then formed VA Affordable, and a few days later, Dorothy quitclaimed the property to that entity.

After VA Affordable recorded its deed, a title insurance company recorded an affidavit of lost document—to which a copy of the purported deed of trust was attached as an exhibit—explaining that a division of the company was supposed to record the original deed of trust, but that it was inadvertently lost and not recorded. SMC then filed a complaint in district court against VA Affordable asserting claims for quiet title and fraudulent transfer, essentially seeking a ruling that it has an enforceable deed of trust and that VA Affordable took the property subject to that interest. VA Affordable filed an answer and counterclaim in which it sought a ruling that it acquired the property free and clear of SMC's purported security interest and that the affidavit of lost document constituted a slander of title.

SMC ultimately filed a motion for summary judgment on all pending claims. The district court entered an order granting that motion

¹We do not recount the facts except as necessary to our disposition.

over VA Affordable's opposition, and VA Affordable appealed from that order (Docket No. 80601-COA). SMC later filed a motion for attorney fees and costs, which the district court granted; VA Affordable appealed from that order as well (Docket No. 80945-COA). Finally, the district court issued a third order consolidating the previous orders in one document, and VA Affordable likewise appealed from that order (Docket No. 81175-COA). The supreme court subsequently consolidated the appeals and transferred them to this court.

Docket No. 80601-COA

With respect to the district court's grant of summary judgment, VA Affordable argues in part that the district court incorrectly applied the summary judgment standard under NRCP 56 by failing to consider VA Affordable's objections to the admissibility of the evidence SMC proffered in support of its purported security interest. Because we agree with VA Affordable on this point, we decline to address its other arguments in favor of reversal.

Before a district court may grant summary judgment, the moving party must first "show[] that there is no genuine dispute as to any material fact." NRCP 56(a). Indeed, "[t]he party moving for summary judgment bears the initial burden of production to show the absence of a genuine [dispute] of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).² The nonmoving party, on the

²Although the moving party may meet this burden by merely pointing to the absence of evidence in support of the nonmoving party's case when the nonmoving party will bear the burden of persuasion at trial, *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134, because "each party in a quiet title action has the burden of demonstrating superior title in himself or herself," *Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 48, 437 P.3d 154, 156 (2019), SMC

other hand, may survive a motion for summary judgment in two ways. It may cite to portions of the record or produce other evidence demonstrating a genuine factual dispute, NRCP 56(c)(1)(A), or it may show that the materials cited by the adverse party do not establish the absence of a genuine factual dispute, which it can accomplish by showing that the adverse party cannot produce admissible evidence to support its characterization of the facts, NRCP 56(c)(1)(B). Concerning the latter, the rule explicitly permits a party to object to the admissibility of evidence offered at the summary judgment stage. NRCP 56(c)(2).

In *Wood v. Safeway, Inc.*, our supreme court held that “[t]he nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine [dispute of material fact]” to withstand summary judgment. 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). But this requirement presupposes that the moving party properly supported its motion for summary judgment to begin with. *See id.* at 731, 121 P.3d at 1030-31 (“When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.” (alteration and internal quotation marks omitted)).

Here, the district court improperly assumed SMC’s summary judgment motion was properly supported, and it prematurely applied the “affidavit or otherwise” standard set forth in *Wood* without first addressing VA Affordable’s evidentiary challenges under NRCP 56(c)(2). In its

does indeed have an affirmative burden to support its motion for summary judgment with competent evidence of the existence and enforceability of its purported security interest.

opposition to SMC's motion for summary judgment, VA Affordable set forth various arguments concerning the admissibility of SMC's proffered evidence in support of its purported security interest, including that the copy of the deed of trust SMC produced was not properly authenticated. The district court did not address these points; rather, it concluded that VA Affordable did not dispute the facts as set forth in SMC's motion for summary judgment. But in light of VA Affordable's evidentiary objections concerning the copy of the deed of trust, it was plainly disputing SMC's rendition of the facts on this point, and the district court erred in concluding otherwise.

Instead of addressing whether SMC had properly supported its motion, the district court took issue with VA Affordable's efforts "to put the onus on the Plaintiff to establish the non-existence of any genuine issue of fact as the moving party . . . rather than sufficiently meet the burden placed on it as the nonmoving party under *Wood* . . . to demonstrate a genuine issue for trial." This was error. The onus *is* on the plaintiff (SMC) to establish that no genuine dispute of material fact exists before any burden shifts to the nonmoving party, and the nonmoving party may show that the moving party failed to meet this burden by challenging the admissibility of the evidence offered by that party. NRCP 56(a), (c)(1)(B), (c)(2). By failing to conduct this initial analysis, the district court left this court with nothing to review concerning the merits of VA Affordable's evidentiary challenges, and we decline to address those issues in the first instance. See *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (noting that "this court will not address issues that the district court did not directly resolve").

Accordingly, we reverse the district court's order granting summary judgment and remand this matter for further proceedings consistent with this order, as the district court prematurely shifted the

burden to VA Affordable under *Wood* without considering whether SMC's motion for summary judgment was first properly supported under NRCP 56.³

Docket No. 80945-COA

Turning to the district court's post-judgment order awarding attorney fees and costs, because we are reversing the order granting summary judgment and remanding for further consideration, we necessarily vacate the award of fees and costs as premature, and we take no position on the parties' arguments concerning the propriety of the award. *See W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 876, 139 P.3d 858, 862 (2006).

Docket No. 81175-COA

Finally, we address the third order entered by the district court consolidating the first two into one judgment. While some of the language in the third order is slightly different from the language used in the first two, they are largely identical. Notably, VA Affordable had timely appealed from the first two orders at the time the district court issued the third one.

A judgment is "any order from which an appeal lies." NRCP 54(a). When a party perfects an appeal from a judgment, the district court that issued the judgment loses jurisdiction to alter it. *See Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 454-55 (2010) (providing that the district court loses jurisdiction after an appeal subject to a few narrow exceptions). However, our supreme court has held that a subsequent judgment that does not alter a previously appealed-from judgment is merely superfluous. *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014)

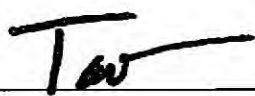
³Because the district court based its entire ruling on this erroneous application of the summary judgment standard, we reverse and remand with respect to all of the parties' claims.


("Because superfluous judgments are unnecessary and confuse appellate jurisdiction, we disapprove of this practice, generally."). Superfluous judgments cannot give rise to an appeal. *Id.*


Here, presuming that the district court did not intend to alter the parties' rights under the first two orders and thereby act without jurisdiction in entering the third, *see Jones v. State*, 107 Nev. 632, 637, 817 P.2d 1179, 1181 (1991) ("[T]rial judges are presumed to know the law and to apply it in making their decisions."), we conclude that the third order was merely a superfluous consolidation of the first two. Accordingly, we dismiss the appeal in Docket No. 81175-COA.

In sum, we reverse the district court's order granting summary judgment in favor of SMC and remand this matter for further proceedings consistent with this order. We also vacate the district court's award of fees and costs as premature, and we dismiss the appeal from the district court's superfluous judgment consolidating the summary judgment and the award of fees and costs.

It is so ORDERED.⁴


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

⁴Insofar as the parties raise arguments that are not specifically addressed in this order, we need not reach them in light of our disposition.

cc: Hon. Egan K. Walker, District Judge
Jack I. McAuliffe, Chtd.
Bader & Ryan
Washoe District Court Clerk