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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP No.	NV-11-1114-KiPaD
	)		
ROBERT A. ALEXANDER and	)	Bk. No.	08-18441-MKN
GLORIA J. ALEXANDER,	)		
	)		
Debtors.	)		
<hr/>			
KATHLEEN A. LEAVITT, Chapter	)		
13 Trustee,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>O P I N I O N</b>	
	)		
ROBERT A. ALEXANDER; GLORIA	)		
J. ALEXANDER,	)		
	)		
Appellees.	)		
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Argued and Submitted on June 15, 2012  
at Las Vegas, Nevada

Filed - June 27, 2012

Appeal from the United States Bankruptcy Court  
for the District of Nevada

Honorable Mike K. Nakagawa, Chief Bankruptcy Judge, Presiding

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Appearances: Lauren A. Peña, Esq. argued for appellant, Kathleen  
A. Leavitt, chapter 13 trustee;  
Troy S. Fox, Esq. of Crosby & Associates argued for  
appellees, Robert and Gloria Alexander

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Before: KIRSCHER, PAPPAS, and DUNN, Bankruptcy Judges.

1 KIRSCHER, Bankruptcy Judge:

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3 Appellant, chapter 13<sup>1</sup> trustee Kathleen A. Leavitt  
4 ("Trustee"), appeals an order from the bankruptcy court overruling  
5 her objection to debtors' claimed exemption for a mobile kitchen  
6 as a "vehicle." We AFFIRM.

7

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Debtors, Robert A. Alexander and Gloria J. Alexander  
9 ("Debtors"), filed a chapter 13 bankruptcy petition on July 30,  
10 2008. At that time, both Debtors were employed as bus drivers for  
11 the Clark County School District. Mr. Alexander has since  
12 retired. Prior to filing their bankruptcy case, Debtors purchased  
13 a 2007 Mobile Kitchen Trailer ("Mobile Kitchen") to be used for a  
14 mobile barbeque sandwich business. Debtors used the Mobile  
15 Kitchen approximately twelve times prior to the bankruptcy, but  
16 between licensing issues and Mr. Alexander's health problems, they  
17 ceased using the Mobile Kitchen until Mrs. Alexander could retire  
18 to assist Mr. Alexander in operating it.

19 Debtors listed the Mobile Kitchen in their original Schedule  
20 B with a value of \$25,000; they listed the barbeque business,  
21 "B & E Barbeque," as having a value of \$0. In their Schedule C,  
22 Debtors listed the Mobile Kitchen as a "tool of the trade" under  
23 NEV. REV. STAT. ("NRS") § 21.090(1)(d) with a claimed exemption  
24 value of \$20,000. Debtors also listed in their Schedule B a 2004  
25 BMW 5 Series and a 2004 Dodge Ram 1500. They did not exempt these

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27 <sup>1</sup> Unless specified otherwise, all chapter, code, and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 vehicles because both were fully encumbered.

2 Over the next two years, Trustee objected to Debtors' claimed  
3 exemptions for the Mobile Kitchen as either a "tool of the trade"  
4 under NRS § 21.090(1)(d) or as a "necessary household good" under  
5 NRS § 21.090(1)(b). The parties did eventually agree to value the  
6 Mobile Kitchen at \$17,000.

7 Faced with a contested confirmation hearing due to the  
8 exemption dispute, the parties each were instructed to submit a  
9 two-page statement regarding their position on the Mobile Kitchen  
10 exemption. In their statement, Debtors argued that the Mobile  
11 Kitchen qualified as a "tool of the trade" because they intended  
12 to use it as a business in the future. Debtors also argued the  
13 Mobile Kitchen qualified as a "necessary household good."  
14 Alternatively, Debtors proposed a new theory - that the Mobile  
15 Kitchen could be considered a "vehicle" exemptible under NRS  
16 § 21.090(1)(f).<sup>2</sup>

17 At the confirmation hearing on August 25, 2010, the  
18 bankruptcy court directed the parties to brief the issue as to how  
19 mobile kitchens of this type had been treated in other courts.  
20 Both parties submitted their supplemental briefs on September 15,  
21 2010. Neither party could locate case law from Nevada (or any  
22 other jurisdiction) addressing the classification of a mobile  
23 kitchen.

24 Debtors' brief asserted the same three possible exemption  
25 categories for the Mobile Kitchen, contending that it was

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27 <sup>2</sup> NRS § 21.090(1)(f) exempts "one vehicle if the judgment  
28 debtor's equity does not exceed \$15,000 or the creditor is paid an  
amount equal to any excess above that equity."

1 Trustee's burden to prove the exemption was not valid. To support  
2 their position that it was an exemptible "vehicle," Debtors  
3 attached copies of the Certificate of Registered Ownership for the  
4 Mobile Kitchen from the Nevada Department of Motor Vehicles, a  
5 copy of a receipt from the DMV for the Mobile Kitchen's title and  
6 registration fees, and a copy of a DMV Field Service inspection.  
7 Debtors contended that because the Mobile Kitchen had a Vehicle  
8 Identification Number and because it was registered with the DMV,  
9 it was a "vehicle" under Nevada law and therefore exemptible under  
10 NRS § 21.090(1)(f).

11 In her brief, Trustee maintained that the Mobile Kitchen was  
12 not encompassed in any Nevada exemption provisions, and thus its  
13 value had to be included in the liquidation analysis for  
14 confirmation of Debtors' proposed plan. Trustee focused most of  
15 her argument on the "tools of the trade" exemption, contending  
16 that the Mobile Kitchen did not qualify because it had not  
17 contributed to Debtors' support to a reasonable and meaningful  
18 extent in the past as required by Nevada law. Trustee briefly  
19 contended that the Mobile Kitchen was not an exemptible "household  
20 good" because it was not in, or a part of, Debtors' household.  
21 She also opposed the "vehicle" exemption because the Mobile  
22 Kitchen was not essential to Debtors' transportation.

23 After a brief hearing on the exemption matter, the bankruptcy  
24 court entered its Memorandum Decision on February 22, 2011. The  
25 court agreed with Trustee that the Mobile Kitchen was not  
26 exemptible as a "tool of the trade" under NRS § 21.090(1)(d)  
27 because it had not provided support for Debtors in the past, and,  
28 under In re Kolsch, 58 B.R. 67, 70 (Bankr. D. Nev. 1986), Debtors

1 presented no evidence demonstrating that a reasonable or realistic  
2 prospect existed of using the Mobile Kitchen in the future to earn  
3 Debtors their living. The court also sustained Trustee's  
4 objection that the Mobile Kitchen was not exemptible under NRS  
5 § 21.090(1)(b) because it was not a "household good" or a  
6 "necessary" household good. The court rejected Debtors' argument  
7 that the Mobile Kitchen was merely a "backyard barbeque" since it  
8 is mounted on a trailer and includes a refrigerator, freezer,  
9 sink, and a sandwich preparation machine. Further, Debtors had  
10 presented no evidence that the Mobile Kitchen served as their  
11 household kitchen or even as a backyard barbeque, and no meals  
12 were prepared there for Debtors or their dependents.

13       However, the bankruptcy court overruled Trustee's objection  
14 to Debtors' exemption for the Mobile Kitchen as a "vehicle" under  
15 NRS § 21.090(1)(f). Acknowledging that Chapter 21 did not define  
16 "vehicle" or refer to a definition of "vehicle," the court turned  
17 to Chapter 482 of the NRS (Motor Vehicles and Trailers: Licensing,  
18 Registration, Sales and Leases), which defines "vehicle" as "every  
19 device in, upon or by which any person or property is or may be  
20 transported or drawn upon a public highway." The court found that  
21 the Mobile Kitchen was a device upon or by which property may be  
22 drawn upon a public highway, and thus it fell within the  
23 definition of vehicle under NRS § 482.135. Turning then to NRS  
24 § 482.125, which defines "trailer" as "every vehicle without  
25 motive power designed to carry property or passengers wholly on  
26 its own structure and to be drawn by a motor vehicle," the court  
27 found that the Mobile Kitchen fell within the definition of  
28 trailer because it has no motor power and, for the same reason,

1 could not fall within the definition of a "motor vehicle" under  
2 NRS § 482.075.<sup>3</sup>

3 The bankruptcy court then observed that NRS § 21.090(1)(f)  
4 refers to an exemption for "one vehicle" rather than to "one motor  
5 vehicle," and it did not exclude trailers. Reasoning that the  
6 legislature was not ignorant of the distinctions it drew between  
7 "vehicles" and "motor vehicles" when enacting the exemption  
8 statutes, and taking into consideration Nevada's policy that  
9 exemptions be liberally construed in favor of the debtor, the  
10 bankruptcy court concluded that the Mobile Kitchen could be  
11 exempted under NRS § 21.090(1)(f). Although the exemption limit  
12 under NRS § 21.090(1)(f) is \$15,000 for one vehicle, because joint  
13 debtors are allowed to "stack" exemptions in Nevada (for a total  
14 of \$30,000), Debtors were allowed an exemption for \$17,000.

15 On February 22, 2011, the bankruptcy court entered an order  
16 overruling Trustee's objection and allowing Debtors' exemption for  
17 the Mobile Kitchen. Debtors filed their fourth amended Schedule C  
18 on February 25, 2011, reflecting the Mobile Kitchen as an exempt  
19 vehicle under NRS § 21.090(1)(f). Trustee timely appealed.

## 20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction under 28 U.S.C.  
22 §§ 157(b)(2)(B) and 1334. We have jurisdiction under 28 U.S.C.  
23 § 158.

## 24 **III. ISSUE**

25 Did the bankruptcy court err when it determined that the  
26 Mobile Kitchen could be exempted as a "vehicle" under NRS

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27 <sup>3</sup> NRS § 482.075 defines "motor vehicle" as "every vehicle as  
28 defined in NRS § 482.135 which is self-propelled."

1 § 21.090(1)(f)?

2 **IV. STANDARDS OF REVIEW**

3 We review a bankruptcy court's findings of fact for clear  
4 error and review de novo its conclusions of law, including  
5 interpretations of state exemption statutes. Simpson v. Burkart  
6 (In re Simpson), 366 B.R. 64, 70 (9th Cir. BAP 2007), aff'd, 557  
7 F.3d 1010, 1014 (9th Cir. 2009).

8 **V. DISCUSSION**

9 **A. The bankruptcy court did not err when it determined that the**  
10 **Mobile Kitchen could be exempted as a "vehicle" under NRS**  
11 **§ 21.090(1)(f).**

12 **1. Applicable law.**

13 Upon the filing of a bankruptcy petition, an estate is  
14 created consisting of all legal and equitable interests of the  
15 debtor in property as of the date of the filing of the petition.  
16 § 541(a)(1). Section 522 allows a debtor to exempt certain  
17 property from his or her estate. "The purpose of Nevada's  
18 exemption statutes is 'to secure to the debtor the necessary means  
19 of gaining a livelihood, while doing as little injury as possible  
20 to the creditor.'" Savage v. Pierson, 157 P.3d 697, 700 (Nev.  
21 2007) (quoting Kreig v. Fellows, 30 P. 994, 995 (Nev. 1892)).

22 Exemptions are to be liberally construed in favor of the  
23 debtor who claims the exemption. Arrol v. Broach (In re Arrol),  
24 170 F.3d 934, 937 (9th Cir. 1999); In re Christensen, 149 P.3d 40,  
25 43 (Nev. 2006) ("We liberally and beneficially construe our state  
26 exemption statutes in favor of the debtor."). A claim of  
27 exemption is presumed valid, and the burden is on the objecting  
28 party to prove, by a preponderance of the evidence, that an  
exemption is improperly claimed. Tyner v. Nicholson (In re

1 Nicholson), 435 B.R. 622, 630, 634 (9th Cir. BAP 2010); Rule  
2 4003(c); § 522(1).

3 Nevada has opted out of the federal exemption scheme provided  
4 under § 522(d). See NRS § 21.090(3). Therefore, Nevada law  
5 governs substantive issues regarding exemptions. The Nevada  
6 Supreme Court has not determined whether a "mobile kitchen  
7 trailer" or similar device is exemptible under state law. "When a  
8 decision turns on applicable state law and the state's highest  
9 court has not adjudicated the issue, a federal court must make a  
10 reasonable determination of the result the highest state court  
11 would reach if it were deciding the case." Aetna Cas. & Sur. Co.  
12 v. Sheft, 989 F.2d 1105, 1108 (9th Cir. 1993).

## 13 **2. Analysis.**

14 Although Trustee concedes that Chapter 482 is the only  
15 chapter within the NRS defining vehicles, she contends the  
16 bankruptcy court erroneously looked to NRS § 482.135 for the  
17 definition of "vehicle," which resulted in a strict interpretation  
18 directly controverting the legislative intent of NRS  
19 § 21.090(1)(f). Specifically, Trustee argues that because the  
20 purpose and intent behind Chapter 482 are so radically different  
21 from the exemption statutes in Chapter 21, its definition cannot  
22 be applied to any other statutes outside of Chapter 482. Trustee  
23 contends that the ordinary, contemporary meaning of "vehicle"  
24 should be used to determine the exemption. Trustee also argues  
25 that legislative history reveals Nevada lawmakers intended NRS  
26 § 21.090(1)(f) to provide debtors an exemption only for a reliable  
27 vehicle to travel to and from work.

28 Because we are interpreting the instant statute as we believe

1 the Nevada Supreme Court would interpret it, we apply Nevada rules  
2 for statutory construction. Sticka v. Casserino (In re  
3 Casserino), 290 B.R. 735, 737, 739-40 (9th Cir. BAP 2003) (scope  
4 of Oregon state law exemption involves construction of state law  
5 using Oregon policy), aff'd, 379 F.3d 1069 (9th Cir. 2004);  
6 Citizens for Responsible Gov't State Political Action Comm. v.  
7 Davidson, 236 F.3d 1174, 1190 (10th Cir. 2000) (applying Colorado  
8 rules of statutory construction to Colorado statute); Hodes v.  
9 Jenkins (In re Hodes), 308 B.R. 61, 68 (10th Cir. BAP 2004)  
10 (bankruptcy court had to interpret Kansas exemption statute  
11 according to Kansas' rules of statutory construction).

12       When interpreting a statutory provision, Nevada courts first  
13 look to the plain language of the statute and ascribe words their  
14 plain meaning. Savage, 157 P.3d at 699. If a statutory phrase is  
15 left undefined, the court construes the phrase according to its  
16 plain and ordinary meaning. In re Resort at Summerlin Litig., 127  
17 P.3d 1076, 1079 (Nev. 2006). We generally presume that the plain  
18 meaning of the words reflects the legislature's intent, unless  
19 that reading violates the spirit of the act or leads to an absurd  
20 result. Villanueva v. State, 27 P.3d 443, 446 (Nev. 2001). The  
21 court will not look beyond the statutory language unless the  
22 language is ambiguous. In re Resort at Summerlin Litig., 127 P.3d  
23 at 1079. Only when a statute is ambiguous, meaning it is capable  
24 of more than one reasonable interpretation, will the court  
25 ascertain the legislative intent by analyzing the statute's  
26 legislative history and construing the statute in accordance with  
27 reason and public policy. Great Basin Water Network v. State  
28 Eng'r, 234 P.3d 912, 918 (Nev. 2010). Whenever possible, a

1 statute must be construed so that no part of it is rendered  
2 nugatory or mere surplusage. Savage, 157 P.3d at 699.

3 NRS § 21.090(1)(f) provides an exemption for "one vehicle if  
4 the judgment debtor's equity does not exceed \$15,000 or the  
5 creditor is paid an amount equal to any excess above that equity."  
6 The word in question here is "vehicle." The term vehicle is not  
7 defined in Chapter 21 of the NRS. Therefore, because "vehicle"  
8 has been left undefined in Chapter 21, we must construe "vehicle"  
9 according to its plain and ordinary meaning. In re Resort at  
10 Summerlin Litig., 127 P.3d at 1079. Black's Law Dictionary  
11 defines vehicle as: "1. An instrument of transportation or  
12 conveyance. 2. Any conveyance used in transporting passengers or  
13 things by land, water, or air." Black's Law Dictionary 1693 (9th  
14 ed. 2009). The American Heritage Dictionary defines vehicle as:  
15 "1. A device for carrying passengers, goods, or equipment."  
16 American Heritage Dictionary 752 (2d ed. 1983). Given these broad  
17 definitions, the Mobile Kitchen is clearly a vehicle, as it is a  
18 conveyance used to transport things by land, and/or it is a device  
19 for carrying goods or equipment. Trustee's definition of vehicle  
20 as "a device used to transport people between locations" is far  
21 too narrow, and she fails to cite any authority to support it. In  
22 addition, the fact the Mobile Kitchen is registered with the  
23 Nevada DMV and has a Vehicle Identification Number makes an even  
24 more compelling case that it is, by its plain and ordinary  
25 meaning, a vehicle.

26 Rather than turning to the plain and ordinary meaning of  
27 vehicle, the bankruptcy court consulted Chapter 482 of the NRS -  
28 the only chapter in which vehicle is defined - to find the meaning

1 of the word. Contrary to Trustee's argument, this was not  
2 necessarily erroneous. In another exemption case, the Nevada  
3 Supreme Court was asked to determine whether a security deposit in  
4 a residential lease was exempt under either the homestead  
5 exemption (NRS § 21.090(1)(1)) or the dwelling exemption (NRS  
6 § 21.090(1)(m)). Savage, 157 P.3d at 698. Although the Court  
7 concluded that neither exemption applied, to determine whether the  
8 deposit fell under the homestead exemption, the Court turned to  
9 NRS Chapter 115 -- Homesteads -- where the term "homestead" is  
10 defined, as it is not defined in Chapter 21. Id. at 700. The  
11 Court noted that NRS § 115.010(2) limits homestead exemptions  
12 "only to that amount of equity in property held by the claimant  
13 which does not exceed \$350,000 in value." Id. (emphasis in  
14 original). After reviewing the definition of "equity" in NRS  
15 § 115.005(1) and decisions by courts in other jurisdictions with a  
16 similar homestead exemption statute, the Savage court held that  
17 given the plain language of NRS § 21.090(1)(1), NRS § 115.005(1),  
18 and NRS § 115.010(2), the security deposit was not exempt under  
19 Nevada law. Id. at 702.<sup>4</sup>

20 Therefore, while not explicitly stating so, when a term is  
21 not defined in the pertinent chapter of the NRS, Savage allows the  
22 court to look to other chapters within the NRS where the term at

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24 <sup>4</sup> The Savage court also noted that the term "dwelling" is  
25 not defined in NRS Chapter 21 or in NRS Chapter 115, but that  
26 "dwelling" is defined in NRS Chapter 118 -- Landlord/Tenant.  
27 However, because the definition of "dwelling" was not at issue,  
28 the Court did not explore it. Nevertheless, nothing indicates the  
Court would not have reviewed Chapter 118 had the definition of  
"dwelling" been in dispute. Savage, 157 P.3d at 702 n.29.  
Actually, statements made by the Court indicate that it would have  
looked to Chapter 118 for guidance if needed. Id. at 703 n.35.

1 issue is defined for guidance. Several other courts employ this  
2 same rule. See United States v. Wade, 181 F. Supp. 2d 715 (E.D.  
3 Mich. 2002) (court looked to other sections of Michigan statutes  
4 for guidance on definition of term "peace officer" where term was  
5 not expressly defined); Ohio River Pipe Line, LLC v. Gutheil, 761  
6 N.E.2d 633 (Ohio Ct. App. 2001) (in construing statutory terms  
7 "petroleum" and "oil" court is guided by the legislature's use of  
8 these same terms defined elsewhere in the Revised Code); State v.  
9 Vega, 691 A.2d 22 (Conn. App. Ct. 1997) (when statute does not  
10 define phrase, court may look to meaning given phrase in unrelated  
11 statutes and consider that where legislature uses same phrase it  
12 intends same meaning). Using either the plain and ordinary  
13 meaning of "vehicle" or using its definition in Chapter 482, we do  
14 not consider the term to be ambiguous, and thus we need not look  
15 to legislative intent to determine its meaning. In NRS § 482.135,  
16 vehicle is defined as "every device in, upon or by which any  
17 person or property is or may be transported or drawn upon a public  
18 highway." In that same chapter, "trailer" is defined as "every  
19 vehicle without motive power designed to carry property or  
20 passengers wholly on its own structure and to be drawn by a motor  
21 vehicle." NRS § 482.125. The Mobile Kitchen is a device upon or  
22 by which property may be drawn upon a public highway, so it  
23 certainly meets the definition of "vehicle." It also meets the  
24 definition of "trailer" because it lacks motive power but is  
25 designed to carry property wholly on its own structure and be  
26 drawn by a motor vehicle. NRS § 21.090(1)(f) allows a debtor an  
27 exemption for "one vehicle." The statute does not require the  
28 vehicle to be a "motor vehicle," and it does not expressly exclude

1 trailers.

2       Therefore, considering Nevada's policy that exemptions be  
3 liberally and beneficially construed in favor of the debtor, that  
4 the Mobile Kitchen is a "vehicle" under Nevada law, and that NRS  
5 § 21.090(1)(f) does not expressly exclude trailers, we conclude  
6 the Mobile Kitchen is exempt under NRS § 21.090(1)(f). While  
7 Chapter 482 and Chapter 21 may have different purposes, nothing in  
8 either Chapter suggests they are in contravention with one another  
9 or that the bankruptcy court's interpretation of the word vehicle  
10 "directly defies" the purpose of the exemption statute as Trustee  
11 argues. Considering the particular facts of this case, allowing  
12 the Mobile Kitchen as an exempted vehicle does not lead to an  
13 absurd result, particularly because it is, at least to some  
14 degree, tied with Debtors' future livelihood.<sup>5</sup> If the Nevada  
15 Legislature intended to limit exempted vehicles to only those  
16 vehicles necessary for a debtor's transportation to and from work  
17 or to maintain the debtor's livelihood, it could have easily done  
18 so by providing that narrow definition in the exemption statutes.

19       Therefore, whether applying the plain and ordinary meaning of  
20 vehicle or its defined meaning in Chapter 482, the bankruptcy  
21 court did not err when it determined that the Mobile Kitchen could  
22 be exempted as a "vehicle" under NRS § 21.090(1)(f).

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24       <sup>5</sup> Notwithstanding the requirement that exemption statutes be  
25 liberally construed, allowing a debtor to exempt as a vehicle all  
26 types and varieties of trailers could conceivably lead to absurd  
27 results, such as where a particular trailer serves an undisputably  
28 nonessential or recreational purpose. In such instances, the  
bankruptcy court may properly consider whether the application of  
a dictionary, statutory, or some other definition to the term  
"vehicle" in the exemption statute is appropriate. In addition,  
to avoid such results, the legislature may consider amending the  
statute to include an applicable definition.

1 **B. We cannot reach the issue of whether the bankruptcy court was**  
2 **correct in holding that the Mobile Kitchen was not exemptible**  
3 **as a "necessary household good" under NRS § 21.090(1)(b).**

4 The Panel may raise jurisdictional issues sua sponte. Paine  
5 v. Dickey (In re Paine), 250 B.R. 99, 104 (9th Cir. BAP 2000).

6 The parties have briefed this issue assuming we have jurisdiction  
7 to review it. As explained below, we lack jurisdiction over this  
8 matter, and therefore we may not consider it.

9 Trustee asks us to affirm the bankruptcy court's  
10 determination that the Mobile Kitchen was not an exemptible  
11 "necessary household good" under NRS § 21.090(1)(b). Notably,  
12 Trustee did not raise this issue in her Statement of Issues on  
13 Appeal. Furthermore, since she was the prevailing party on this  
14 issue, she lacks standing to appeal this portion of the exemption  
15 order. See Picard v. Credit Solutions, Inc., 564 F.3d 1249, 1256  
16 (11th Cir. 2009) ("Ordinarily, the prevailing party does not have  
17 standing to appeal because it is assumed that the judgment has  
18 caused that party no injury.") (quoting Agripost, Inc. v.  
19 Miami-Dade County, 195 F.3d 1225, 1230 (11th Cir. 1999) (citing  
20 Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326, 333 (1980))). An  
21 exception to this rule exists where the prevailing party is  
22 prejudiced by the preclusive effect of the trial court's decision,  
23 but this exception is not applicable here. Id.

24 Debtors attempt to argue that the bankruptcy court erred to  
25 the extent it determined that the Mobile Kitchen was not  
26 "necessary" for their reasonable comfort. Debtors did not file a  
27 cross-appeal on this issue. Under Rule 8002(a), a party wishing  
28 to cross-appeal must file its notice of appeal within 14 days of  
the filing date of the first notice of appeal. "An appellee who

1 fails to file a cross-appeal cannot attack a judgment with a view  
2 towards enlarging his own rights." Spurlock v. FBI, 69 F.3d 1010,  
3 1018 (9th Cir. 1995) (citations omitted). See also Greenlaw v.  
4 United States, 554 U.S. 237, 244-45 (2008) ("Under [the] unwritten  
5 but longstanding [cross-appeal] rule, an appellate court may not  
6 alter a judgment to benefit a non-appealing party. This Court,  
7 from its earliest years, has recognized that it takes a  
8 cross-appeal to justify a remedy in favor of an appellee.")  
9 (citing McDonough v. Dannery, 3 Dall. 188, 198 (1796)). Because  
10 Debtors seek to enlarge their exemption rights, a timely filed  
11 notice of cross-appeal was required.

12       However, in reviewing the bankruptcy court docket, we  
13 discovered that Debtors filed a Supplemental Statement of Issues  
14 on Appeal and Designation of Record ("Statement"). Unfortunately,  
15 we could not locate any authority, and the parties have cited  
16 none, holding that a statement of this nature, even though timely  
17 filed, can substitute as a notice of cross-appeal. In any event,  
18 we cannot treat Debtors' Statement as a proper cross-appeal.

19       Under Rule 8006, within 14 days after appellant has served  
20 its statement of the issues on appeal, the appellee may file and  
21 serve on the appellant a designation of additional items to be  
22 included in the record on appeal. However, the appellee may file  
23 and serve a counter-statement only if the appellee has filed a  
24 cross-appeal. Id.; see also 718 Arch St. Assocs., Ltd. v.  
25 Blatstein (In re Blatstein), 260 B.R. 698, 710 (E.D. Pa. 2001);  
26 Frymire v. PaineWebber, Inc., 107 B.R. 506, 513-14 (E.D. Pa. 1989)  
27 (filing of notice of cross-appeal is a prerequisite to the filing  
28 of a counter-statement of the issues on appeal and designation of

1 additional items, and such counter-statement cannot substitute for  
2 the filing of a notice of cross-appeal).

3 In the absence of a timely filed notice of cross-appeal, the  
4 Panel does not have jurisdiction to address the issue raised by  
5 Debtors. See Abrams v. Sea Palms Assocs., Ltd. (In re Abrams),  
6 229 B.R. 784, 788 (9th Cir. BAP 1999) (applying prior Rule 8002(a)  
7 and its 10-day rule), aff'd, 242 F.3d 380 (9th Cir. 2000)  
8 (unpublished table decision). Because Debtors did not timely file  
9 a notice of cross-appeal, and because the Statement is not a  
10 proper substitute for one, we lack jurisdiction to decide this  
11 issue.

12 **VI. CONCLUSION**

13 For the foregoing reasons, we AFFIRM.

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