

UNPUBLISHED

**UNITED STATES COURT OF APPEALS**  
**FOR THE FOURTH CIRCUIT**

RITA THOMAS; DEBRA JONES,  
*Plaintiffs-Appellants,*

v.

WELLS FARGO HOME MORTGAGE,  
INCORPORATED,  
*Defendant-Appellee.*

No. 02-2246

RITA THOMAS; DEBRA JONES,  
*Plaintiffs-Appellees,*

v.

WELLS FARGO HOME MORTGAGE,  
INCORPORATED,  
*Defendant-Appellant.*

No. 02-2292

Appeals from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
W. Earl Britt, Senior District Judge.  
(CA-00-224-5-BR)

Submitted: March 20, 2003

Decided: March 27, 2003

Before WILLIAMS and TRAXLER, Circuit Judges, and  
HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

Rita Thomas; Debra Jones, Appellants Pro Se. Marilyn E. Culp, KILPATRICK, STOCKTON, L.L.P., Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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**OPINION****PER CURIAM:**

In No. 02-2246, Rita Thomas and Debra Jones seek to appeal an order of the clerk of the district court awarding costs to Wells Fargo Home Mortgage, Inc. (Wells Fargo), following judgment in Wells Fargo's favor. Pursuant to Fed. R. Civ. P. 54(d)(1), the clerk may tax costs to the prevailing party. Here, the clerk fixed costs in the amount of \$21,869.16, but reduced that amount by seventy-five percent based on Thomas and Jones's good faith and inability to pay, for a final award of \$5,467.29. In No. 02-2292, Wells Fargo cross-appealed this reduction.

"On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court." Fed. R. Civ. P. 54(d)(1). This court has held that failure to make a timely motion under the rule constitutes a waiver of the right to such review. *Gary v. Spires*, 634 F.2d 772, 773 (4th Cir. 1980). Neither party moved for review in the district court, and instead filed notices of appeal directly to this court. Therefore, they have waived their right to review in the district court, and there is no order subject to our review. 28 U.S.C. §§ 1291, 1292 (2000). We dismiss both appeals for lack of jurisdiction. We deny Wells Fargo's motion for summary disposition as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*DISMISSED*