

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST H. KEITT AND HOLLY L.  
KEITT,

Appellants,

vs.

CHASE MANHATTAN MORTGAGE  
CORPORATION; NEVP, LLC; A.


ROSALES; K. SCHEELER; AND KS  
NEVADA, INC.,

Respondents.

No. 43217

**FILED**

JUL 17 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting summary judgment to respondent Chase Manhattan Mortgage Corporation in a foreclosure matter. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed potential jurisdictional defects, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, we noted that, among other things, it appeared that appellants' April 23, 2004 notice of appeal was untimely filed.<sup>1</sup>

Although the notice of entry's certificate of service indicates that service was accomplished on March 16, 2004, by mailing the notice to appellants' counsel through the "United States Mail," postage prepaid,

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<sup>1</sup>See NRAP 4(a) (providing that a notice of appeal must be filed no later than thirty days after written notice of entry of the order appealed from is served); NRAP 26(c) (adding three days to the prescribed period when service was by mail).

appellants disputed that they were actually served with notice of the final order's entry. Because resolving this jurisdictional issue required a factual finding, we remanded this matter to the district court for the sole purpose of determining whether the notice was ever mailed to counsel.<sup>2</sup>

As directed, the district court held a hearing and transmitted its resulting May 22, 2006 order to this court. In the order, the district court noted its finding that respondents had demonstrated, by a preponderance of the evidence, that they had properly mailed notice of the order's entry to appellants' counsel on March 16, 2004.

As we noted in our order of limited remand, "[s]ervice by mail is complete upon mailing."<sup>3</sup> The district court heard testimony from the law firm employee who signed the certificate of service and averred that outgoing mail was placed into the mail system twice-daily, either when a post office employee picked up the mail from the law firm in the morning, or when another law firm employee personally deposited the mail at the post office in the afternoon. While she did not specifically remember mailing this particular certificate, the employee stated that she normally dated the certificates with the date that they would be placed into the public mail system. Counsel for a co-defendant, who was also listed on the March 16 certificate of service, testified that he had received the mailed notice of entry on March 17, 2004, which indicates that the law firm's normal procedures were carried out with regard to mailing that notice of entry. Nonetheless, appellants' witnesses denied ever receiving the notice.

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<sup>2</sup>See Zugel v. Miller, 99 Nev. 100, 101, 101 n.1, 659 P.2d 296, 297, 297 n.1 (1983); see NRAP 25(1)(c); NRCPC 5(b).

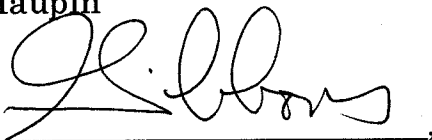
<sup>3</sup>Zugel, 99 Nev. at 101, 659 P.2d at 297; see NRAP 25(1)(c); NRCPC 5(b).

Based on the above testimony, we conclude that the district court's finding that the notice of entry was properly mailed on March 16, 2004, is supported by a preponderance of the evidence.<sup>4</sup> Since service was complete upon mailing, appellants' April 23, 2004 notice of appeal is untimely. Accordingly, as this court lacks jurisdiction to consider this appeal,<sup>5</sup> we

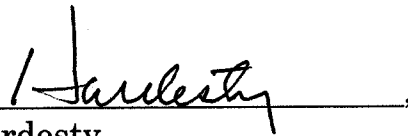
ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Honorable Jackie Glass, District Judge  
Robert F Saint-Aubin, Settlement Judge  
Dan M. Winder  
Beckley Singleton, Chtd./Las Vegas  
Cooper Christensen Law Firm, LLP  
Clark County Clerk

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<sup>4</sup>See Mikohn Gaming v. Espinosa, 122 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 54, July 13, 2006) (recognizing that the mailing date is the date on which a document is placed in the care of a business providing general delivery services to the public, or the United States Postal Service).

<sup>5</sup>See Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (noting that the timely filing of a notice of appeal is a jurisdictional requirement that goes to the power of this court to act).