

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREA ELLEN SPONDER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
RONALD D. PARRAGUIRRE,
DISTRICT JUDGE,

Respondents,

and

MARY GALOFARO,
Real Party in Interest.

No. 44140

FILED

MAR 04 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss the real party in interest's appeal from the justice's court judgment and granting real party in interest's motion for an extension of time to file the record on appeal.

The time for filing a notice of appeal from a justice's court judgment is governed by JCRCP 72B(a), which states that the notice of appeal "shall be filed with the clerk or justice of the justice's court within 20 days of the date of service of written notice of entry of the judgment or order appealed from, except as otherwise provided by law." Under JCRCP 6(e) a party has an additional three days to file a notice of appeal when service of the written notice of entry is by mail. Thus a party has twenty-three days to file a notice of appeal in the district court where service of the written notice of entry is made by mail.

The justice's court's findings of fact, conclusions of law, and judgment was filed on April 14, 2004. On April 15, the judicial assistant to Justice of the Peace Nancy C. Oesterle mailed a copy of this order to both parties' attorneys. On April 22, counsel for petitioner, the prevailing party in the justice's court, served written notice of entry of the justice's court's judgment on petitioner by mail. The real party in interest then filed her notice of appeal on May 12, 2004, twenty days after service of the notice of entry prepared by petitioner's counsel, but twenty-seven days after the justice's court mailed a copy of its judgment to both parties.

Petitioner contends that the copy of the judgment mailed out by the justice's court should be considered service of written notice of entry and therefore, the time for filing a notice of appeal commenced on the date of this mailing. Based on this contention, petitioner argues that the real party in interest's notice of appeal was untimely, because it was filed twenty-seven days after the justice's court mailed the copy of its order. Petitioner thus maintains that the district court lacks jurisdiction to hear the appeal, that her motion to dismiss should have been granted, and that the real party in interest's motion for an extension of time to file the record on appeal should have been denied as moot.

This court has held, however, that the period for filing a notice of appeal commences upon the service of a written notice of entry by one of the parties to the underlying case, not by the lower court's mailing of a copy of its order to the parties.¹ Accordingly, the period in which the real party in interest had to file her appeal in the district court began not when

¹See Matter of Application of Duong, 118 Nev. 920, 59 P.3d 1210 (2002) (applying this rule in the context of NRAP 4(a)(1)).

the justice's court mailed the parties a copy of its order on April 15, 2004, but when petitioner served written notice of entry on the real party in interest by mail on April 22. As noted above, the real party in interest then had twenty-three days to file her notice of appeal.² The notice of appeal was filed in the district court on May 12, twenty days after service of the written notice of entry. The notice of appeal was thus timely filed in the district court. Therefore, the district court has jurisdiction over the appeal and petitioner's motion to dismiss was properly denied. Accordingly, we deny the petition.³

It is so ORDERED.⁴

Becker _____, C.J.
Becker

Maupin _____, J.
Maupin

Douglas _____, J.
Douglas

cc: Eighth Judicial District Court Dept. 3, District Judge
George T. Bochanis, Ltd.
Emerson & Manke, LLP
Clark County Clerk

²JCRCP 72B(a); 6(e).

³See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴We deny as moot petitioner's December 10, 2004 motion for expedited resolution of this petition and for a temporary stay.