

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF LITVAK TRUST
DATED MARCH 12, 2001.

No. 45367

PHYLLIS MAGON LITVAK,
Appellant,
vs.
DEBI RODDEN AND STEVEN LITVAK,
Respondents.

FILED

MAY 23 2006

NEVADA
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an "Order Regarding Stay and Supersedeas Bond" entered in a probate proceeding. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

The settlement judge has filed a report with this court indicating that the parties were unable to agree to a settlement of this matter. Accordingly, the settlement proceedings are concluded.

Respondents have filed a motion to dismiss this appeal. Respondents argue that this appeal should be dismissed because: (1) the notice of appeal is untimely; (2) the doctrine of res judicata precludes consideration of this appeal; and (3) the district court has granted a motion to strike this appeal. Appellant opposes the motion.

Appellant requests this court to remand this appeal for an evidentiary hearing as to the timeliness of the notice. Appellant asserts that it would be an injustice to dismiss this appeal without first determining whether appellant's counsel was served with notice of the final order entered on March 21, 2005. However, the notice of appeal in this matter does not designate the March 21, 2005, order. Therefore, the

date that appellant's counsel was served with notice of entry of the March 21, 2005, order is not relevant, and we decline to remand this appeal for an evidentiary hearing.

Respondents' arguments for dismissal of this appeal lack merit. First, the notice of appeal is not untimely. The instant appeal is from an "Order Regarding Stay and Supersedeas Bond" that was entered on May 13, 2005, not from the final order entered March 21, 2005. The notice of entry of the May 13, 2005, order was served on May 13, 2005, and the notice of appeal was timely filed on May 31, 2005.¹ Second, the doctrine of res judicata does not affect this court's jurisdiction over an appeal. Finally, jurisdiction over this appeal is vested solely in this court, and the district court lacks authority to strike a notice of appeal to this court.² Accordingly, we deny respondents' motion to dismiss.

Nevertheless, we conclude that dismissal of this appeal for lack of jurisdiction is warranted. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.³ The "Order Regarding Stay and Supersedeas Bond" is not a final order in the action below, and no statute or court rule authorizes an appeal from such an order.


¹See NRAP 4(a)(1).


²See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (holding that "[j]urisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court").

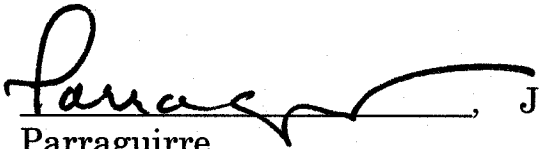
³Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

Having concluded that we lack jurisdiction to consider this appeal, we

ORDER this appeal DISMISSED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
Howard Roitman, Settlement Judge
Herbert Sachs
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk