

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY OMOJOLA, KARIN OMOJOLA;
TERRY OMOJOLA AND KARIN
OMOJOLA AS NATURAL PARENTS
AND GUARDIAN OF KELVIN
OMOJOLA, A MINOR; AND MONA
OMOJOLA, A MINOR,
Appellants,

vs.

BEAZER HOMES HOLDINGS CORP., A
DELAWARE CORPORATION,
Respondent.

No. 47197

FILED

SEP 08 2006

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

ORDER DISMISSING APPEAL

This is an appeal from a district court judgment granting respondent's motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Because our preliminary review of this appeal revealed a potential jurisdictional defect this court ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the notice of appeal may have been untimely filed. An untimely notice of appeal fails to vest jurisdiction in this court.¹

The district court dismissed appellants' action below. Thereafter, on September 30, 2005, appellants filed their timely notice of appeal from the dismissal order. The district court then orally granted respondent's motion for attorney fees on October 11, 2005. But before the district court entered a written order, appellants filed a motion to vacate,

¹See NRAP 4(a)(1); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

reconsider, alter or amend the attorney fees decision pursuant to NRCP 59 and 60. The district court entered a written order granting respondent's motion for attorney fees and costs on November 9, 2005, but it did not resolve the pending motion to alter or amend. On March 8, 2006, the district court denied that motion, and on March 17, 2006, appellants were served electronically with written notice of the order's entry. Accordingly, appellants' notice of appeal from the post-judgment order awarding attorney fees had to be filed in the district court no later than April 20, 2006.² Although the notice of appeal reflects that appellants' counsel dated it April 17, 2006, it was electronically filed in the district court on April 25, 2006, after the 30-day appeal period prescribed by NRAP 4(a).

In response to the order to show cause, appellants contend that the April 25, 2006, notice of appeal was unnecessary because of the prior notice of appeal filed on September 30, 2005, from the district court's order dismissing their complaint.³ However, a post-judgment order awarding attorney fees is a special order after final judgment that is independently appealable.⁴ Therefore, appellants had to file a timely notice of appeal designating the post-judgment order awarding attorney fees to properly invoke this court's jurisdiction.⁵ By definition, the September 30, 2005, notice of appeal did not designate the post-judgment

²NRAP 4(a)(1), (4); NRAP 26(c).

³That appeal was docketed in this court as No. 46078.

⁴Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995); Farmers Ins. Exchange v. Pickering, 104 Nev. 660, 765 P.2d 181 (1988); NRAP 3A(b)(2).

⁵NRAP 3(a), (c).

order. And that notice of appeal cannot be construed as a premature notice of appeal as to the post-judgment order so that the notice would be considered filed upon entry of the post-judgment order because the district court had not yet rendered any decision on the motion for attorney fees when the September 30, 2005, notice of appeal was filed.⁶ Thus, the September 30, 2005, notice of appeal was not sufficient to give this court jurisdiction over the post-judgment order granting attorney fees.

Alternatively, appellants also suggest that the district court lacked jurisdiction to consider the motion for attorney fees because the September 30, 2005, notice of appeal from the order dismissing the complaint divested the district court of jurisdiction to act and vested jurisdiction in this court. However, this argument goes to the district court's jurisdiction, not this court's jurisdiction over this appeal. Moreover, appellants' argument lacks merit because the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, such as an order granting attorney fees.⁷

⁶See NRAP 4(a)(6) (providing that a notice of appeal filed after oral pronouncement of a decision but before entry of a written order or judgment may be dismissed as premature unless a written order is entered before the appeal is dismissed, in which case the notice of appeal is considered filed "on the date of and after entry of the order").

⁷Kantor v. Kantor, 116 Nev. 886, 895, 8 P.3d 825, 830 (2000) (concluding that "issue of attorney's fees was collateral to that part of the case [that had been] appealed"); see also Mack-Manley v. Manley, 122 Nev. ___, ___ P.3d ___ (Adv. Op. No. 75, July 20, 2006); accord Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (explaining that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-

continued on next page . . .

Finally, appellants imply that the notice of appeal was timely filed in this court, rather than the district court. Appellants represent that this court then forwarded the notice of appeal to the district court. We conclude that these allegations are inapposite for two reasons. First, NRAP 3(a) clearly requires that a notice of appeal be filed with the district court clerk within the time allowed by NRAP 4. Unlike the federal rules, neither NRAP 3 nor NRAP 4 provides for any exceptions.⁸ Second, even if we were to recognize an exception and consider a notice mistakenly filed in this court to have been filed in the district court on the date it was received by this court, appellants provided no documentation showing that the notice of appeal was received in this court within the 30-day appeal period.⁹

Appellants' notice of appeal from the post-judgment order awarding attorney fees was untimely filed. Accordingly, we lack

... continued

judgment matters such as attorney fees and costs); NRCP 58(c) ("The entry of the judgment shall not be delayed for the taxing of costs.").

⁸Cf. Fed. R. App. P. 4(d) ("If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.").

⁹We note that the only Nevada Supreme Court receipt stamp on the notice of appeal indicates that it was received in this court on April 28, 2006—3 days after it was filed in the district court. See NRAP 3(e) (requiring the district court clerk to transmit certified, file-stamped copies of the notice of appeal, along with certain other documents, to the clerk of this court).

jurisdiction to consider this appeal and therefore
ORDER this appeal DISMISSED.

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
Piazza & Associates
Koeller Nebeker Carlson & Haluck, LLP
Clark County Clerk