

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR JUNIOR SMITH, II,
Appellant,
vs.
SANDRA J. WEBSTER-SMITH,
Respondent.

No. 47389

FILED

JUN 30 2006

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

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying a motion to change venue and awarding temporary spousal support and attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Sandra Pomrenze, Judge.

Appellant has filed an "emergency notice of withdrawal of appeal," indicating that he wishes to voluntarily dismiss his appeal due to his anticipated indefinite absence from Nevada. In his notice, appellant also asks this court to "order the district court dismissal of the district court case No. D350849," the underlying family court action.

Because, however, appellant untimely filed his notice of appeal more than thirty-three days after notice of the appealed order's

entry was served by mail, we lack jurisdiction to consider this appeal¹ and, accordingly, we dismiss this appeal on jurisdictional grounds.²

It is so ORDERED.³

Becker, J.
Becker

Parraguirre, J. Shearing, Sr. J.
Parraguirre Shearing

¹See NRAP 4(a), 26(c). Additionally, because the divorce complaint remains pending in the district court and no final judgment has been entered, the portion of the district court's order awarding temporary spousal support and attorney fees is interlocutory and not independently appealable and, therefore, even if appellant's notice of appeal had been timely, this court would be without jurisdiction to consider appellant's challenge to that portion of the district court's order. See NRAP 3A(b); Engebretson v. Engebretson, 73 Nev. 19, 307 P.2d 115, (1957). Finally, we also note that appellant's failure to pay the filing fee as required under NRAP 3(f) constitutes another basis on which this appeal could be dismissed.

²In light of this order, we deny as moot appellant's emergency notice to withdraw his appeal. With regard to appellant's request that this court order the dismissal of district court case No. D350849, this court is without jurisdiction to dismiss an ongoing district court divorce action. The district court is the appropriate court in which to move to dismiss a pending divorce complaint. Accordingly, appellant's request regarding the underlying district court case is denied.

³The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.

cc: Hon. Sandra Pomrenze, District Judge, Family Court Division
Edgar Junior Smith II
Mathew P. Harter
Clark County Clerk