

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY K. SELZNICK, M.D.,
Appellant,
vs.
SHAUNA WILLIAMS,
Respondent.

No. 48597

FILED

FEB 27 2007

ORDER DISMISSING APPEAL

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

Pursuant to the recommendation of the settlement judge and good cause appearing, this appeal is removed from the settlement conference program. See NRAP 16(b). We decline to reinstate briefing at this time, however, as appellant has filed a motion to voluntarily dismiss this appeal. See NRAP 42(b).

In the motion, appellant notes that he “prematurely filed this appeal out of an abundance of caution,” and that he has now determined that the order being challenged is not a final appealable judgment. See NRAP 3A(b). Cause appearing, we grant the motion and dismiss this appeal. NRAP 42(b).

Respondent has filed a motion for an award of attorney fees “as a result of Appellant’s frivolous Notice of Appeal.” Respondent requests this court award her \$3,675 in attorney fees “incurred as a result of the untimely Notice of Appeal.” Respondent has attached an itemized bill for attorney fees incurred since the filing of the notice of appeal. Respondent does not, however, cite to any legal authority to support the proposition that the filing of a premature notice of appeal constitutes sanctionable conduct.


Appellant has filed an opposition to the motion for attorney fees. In that opposition, appellant notes that he filed the motion to voluntarily dismiss the appeal as soon as he determined the district court order was not substantively appealable. Appellant argues that the filing of a premature notice of appeal does not constitute a “frivolous” appeal under NRAP 38(b) as appellant filed the notice of appeal out of “an abundance of caution” and not “to misuse or delay the appeals process.” Finally, appellant points out that respondent has included attorney fees for proceedings conducted in the ongoing district court action rather than just expenses incurred related specifically to this appeal in the itemized billing statement attached to the motion for attorney fees.¹

We note that appellant filed the motion to voluntarily dismiss this appeal within 2 weeks after filing the notice of appeal in the district court. Further, under NRAP 38(b), this court may award attorney fees when it determines that “an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent’s imposition on the court below; or whenever the appellate processes of this court have otherwise been misused.” Merely filing a premature notice of appeal does not in itself render an appeal “frivolous” or indicate that an appellant has

¹ Included in that itemized statement for attorney fees incurred on appeal are charges for: (1) “Receive and review Motion to alter Discovery Commission Report and Recommendation granting Protective Order that restricts discovery to damages issues only pursuant to the Order for Partial Summary Judgment;” and, (2) “Draft, finalize, serve and file opposition to Motion to Alter DCCR.”

“frivolously” processed an appeal. This is particularly so as in this case where appellant filed a motion to dismiss the appeal within such a short amount of time upon determining that the appeal was premature. In addition, the settlement judge filed a report indicating that the appeal should be removed from the program prior to conducting any formal settlement conference proceedings. In light of these circumstances, it appears respondent has suffered little, if any, prejudice as result of the appeal being filed. Accordingly, we deny the motion for attorney fees.

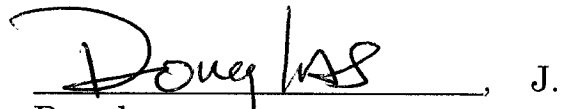
It is so ORDERED.


_____, C.J.

Maupin


_____, J.

Gibbons


_____, J.

Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge
William F. Buchanan, Settlement Judge
Alverson Taylor Mortensen & Sanders
Benjamin B. Childs
Eighth District Court Clerk