

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES N. BELSSNER,
Appellant,
vs.
COUNTRY CLUB SHADOWS
HOMEOWNERS ASSOCIATION,
Respondent.

No. 47487

FILED

APR 12 2007

CHARLES N. BELSSNER,
Appellant,
vs.
COUNTRY CLUB SHADOWS
HOMEOWNERS ASSOCIATION,
Respondent.

No. 48210
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

CHARLES N. BELSSNER,
Appellant,
vs.
COUNTRY CLUB SHADOWS
HOMEOWNERS ASSOCIATION,
Respondent.

No. 48773

ORDER RESOLVING REQUEST FOR CLARIFICATION,
DISMISSING APPEAL IN PART (DOCKET NO. 48210),
DISMISSING APPEAL (DOCKET NO. 48773),
AND DENYING STAY MOTION

Docket No. 47487 is a proper person appeal from a district court order that, among other things, denied appellant's petition for exemption from arbitration. Docket No. 48210 is a proper person appeal from a district court order dismissing the underlying consolidated cases and an order granting respondent's motion for attorney fees. Docket No. 48773 is a proper person appeal from a district court order entering judgment on the award of attorney fees and an amended version of the order granting the motion for attorney fees. These appeals are not

consolidated. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On July 14, 2006, this court dismissed appellant's appeal in Docket No. 47487. Appellant never sought rehearing of the order dismissing that appeal. On October 9, 2006, appellant filed a "re-notice of appeal" in the district court, challenging orders dismissing the underlying cases and awarding attorney fees. This "re-notice of appeal" was treated as a new notice of appeal, and was docketed in this court as Docket No. 48210. On January 16, 2007, appellant filed a third notice of appeal in the district court, challenging the judgment on the fees award and an amended order awarding fees. This appeal was docketed in this court as Docket No. 48773.

Appellant has filed a request for clarification as to why his appeals have been placed in three different docket numbers and why he was required to pay three separate filing fees. Respondent has moved to dismiss the appeal in Docket No. 48210. Appellant has filed a motion for a stay in Docket Nos. 48210 and 48773. Both motions are unopposed. Appellant's request for clarification

We first address appellant's February 14, 2007 request for clarification. Appellant asserts that he was told by court staff that, upon completion of the underlying cases, he could petition to re-open the appeal in Docket No. 47487. He further asserts that this court's dismissal of the appeal in Docket No. 47487 was in error. Appellant asks this court to re-open Docket No. 47487, to consolidate Docket Nos. 48210 and 48773 with Docket No. 47487, and to return one of the filing fees he paid.

Appellant's confusion appears to stem from his lack of understanding of this court's rules.¹ After Docket No. 47487 was dismissed, if appellant wished to "re-open" his appeal, he was required to file a petition for rehearing in this court within 18 days of the date the order dismissing that appeal was filed.² On July 21, 2006, seven days after his appeal was dismissed, appellant called this court and stated his intention to seek rehearing of that order. Appellant, however, never filed a petition for rehearing. Instead, he filed a document entitled "re-notice of appeal" in the district court on October 9, 2006, challenging the orders dismissing the underlying cases and awarding attorney fees to respondent. This court's rules do not permit a party to "re-open" an appeal by filing a notice of appeal in the district court; thus, the "re-notice of appeal" was properly treated as a new notice of appeal.³ Moreover, because the "re-notice of appeal" was properly treated as a new notice of appeal, it was correctly docketed under a separate docket number, 48210, and appellant was therefore required to pay a separate filing fee for that appeal, despite having paid a filing fee for his first premature appeal in Docket No. 47487.

With regard to the appeal pending in Docket No. 48773, if appellant intended to amend his previous notice of appeal to add an appeal from the judgment on the attorney fees award and the amended

¹We caution appellant that although he is proceeding in proper person, he is nonetheless responsible for complying with this court's rules.

²See NRAP 40(a)(1).

³See id. (setting forth the procedures for seeking rehearing of the dismissal of an appeal); NRAP 3(a) (explaining the procedures for filing an appeal from an order of the district court).

order granting attorney fees, he should have styled his notice of appeal as an “amended notice of appeal,” identified the Supreme Court Docket No. of the appeal he was attempting to amend, and provided some indication that he was seeking to amend his previous appeals. Here, appellant’s notice of appeal provides no indication that he intended it to be an amended notice of appeal.⁴ Because appellant failed to inform this court that he was attempting to amend his previous notice of appeal, the appeal in Docket No. 48773 was properly docketed under a separate docket number and appellant was properly required to pay a separate filing fee for his appeal from those orders. Accordingly, we deny his request to return one of the filing fees.

Finally, because the time for seeking rehearing of the order dismissing the appeal in Docket No. 47487 has long since passed, we decline to address appellant’s arguments regarding the propriety of that order, and we deny his request to re-open that appeal. As noted above, appellant failed to file a timely petition for rehearing as required by NRAP 40(a)(1). Appellant’s request for clarification was filed more than six months after the time for filing a petition for rehearing had expired. Because we deny the motion to re-open Docket No. 47487, we deny

⁴In fact, appellant has failed to even properly describe the orders he seeks to appeal from in Docket No. 48773. Appellant purports to appeal from an order filed on December 14, 2006 “on Defendant’s Motion to Dismiss” which he claims to have attached as an exhibit to his notice of appeal. The two documents attached to his notice of appeal do not, however, relate to the motion to dismiss. The first document is a notice of entry for the judgment on the award of attorney fees, which was filed on December 14, 2006. The second document is an amended version of the order granting attorney fees, which was filed on October 20, 2006.

appellant's request to consolidate Docket Nos. 48210 and 48773 with Docket No. 47487.

Respondent's motion to dismiss

Respondent has moved to dismiss the appeal in Docket No. 48210 with regard to the order dismissing the underlying cases. Appellant has not opposed the motion. Respondent argues, among other things, that this appeal is untimely as to the district court's order of dismissal. We agree.

Notice of entry of the district court's August 18, 2006 order of dismissal was served on appellant's then-counsel via U.S. mail on August 21, 2006. Because service of the notice of entry was by mail, appellant had 33 days from the date of service to file his notice of appeal.⁵ Appellant's notice of appeal was therefore due to be filed in the district court on or before September 24, 2006. Appellant filed the notice of appeal in Docket No. 48210 in the district court on October 9, 2006, well beyond the 33-day period for filing his appeal from that order. We therefore conclude that we lack jurisdiction over the appeal from the August 18, 2006 order, and we grant respondent's motion and dismiss Docket No. 48210 to the extent that appellant seeks to challenge that order. Because appellant timely appealed from the September 13, 2006 order awarding attorney fees, however, we have jurisdiction to consider his appeal from that order; accordingly, Docket No. 48210 shall proceed as to only that order.⁶

⁵See NRAP 4(a)(1); NRAP 26(c).

⁶In light of our stated preference for deciding cases on their merits, to the extent that respondent implies that the fact appellant was represented by counsel when he filed the notice of appeal in Docket No.

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Dismissal of Docket No. 48773

In Docket No. 48773, appellant appeals from the judgment on the attorney fees award and an amended version of the order granting attorney fees.⁷ Appellant, however, has already appealed from the original order awarding attorney fees. Because the appeal in Docket No. 48773 addresses the same issue as the appeal in Docket No. 48210—the award of attorney fees to respondent—we conclude that the appeal in Docket No. 48773 is superfluous. Accordingly, we dismiss that appeal. Because the civil proper person appeal statement filed in Docket No. 48773 may prove useful in resolving Docket No. 48210, however, the clerk of this court shall re-file the civil proper person appeal statement filed in Docket No. 48773 on March 5, 2007, in Docket No. 48210.

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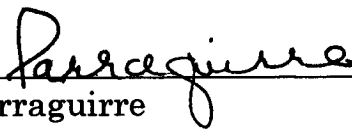
48210 in proper person somehow precludes this court from considering this appeal, we conclude that that contention lacks merit. See Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993) (noting that this state's general underlying fundamental policy is to decide cases on the merits whenever possible).

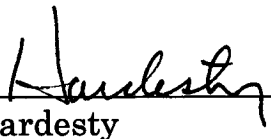
⁷This court has held that the test for determining whether an appeal is properly taken from an amended judgment rather than the original judgment is whether the amendment disturbed or revised legal rights and obligations that had been settled with finality. Morrell v. Edwards, 98 Nev. 91, 640 P.2d 1322 (1982). To the extent that appellant seeks to appeal from the amended order awarding attorney fees, that order does not disturb or revise any legal rights; thus, the appeal was properly taken from the original order. The sole difference between the amended order and the original order is that the amended version was changed to reflect the fact that the underlying cases were consolidated. The judgment amount in both the original and amended orders is the same—\$64,697.46.

Appellant's motion for a stay

Finally, appellant has filed a motion for a stay. It appears that he seeks to stay execution on the attorney fees award pending this court's resolution of these appeals. Respondent has not opposed this motion. Having considered the motion, we conclude that appellant has not demonstrated that a stay is warranted.⁸ Accordingly, we deny the motion for a stay.⁹

It is so ORDERED.

 J.
Parraguirre

 J.
Hardesty

 J.
Douglas

⁸See NRAP 8(c); Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000).

⁹To the extent appellant's request could be construed as a request for alternate security for a stay sought under NRCP 62(d), "the district court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill suited to such a task." See Nelson v. Heer, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (citing Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981)). Accordingly, we deny any request for alternate security, "as the district court is in the best position to weigh the relevant considerations in determining whether alternate security is warranted." Nelson, 121 Nev. at 836, 122 P.3d at 1254. Appellant may, however, file a motion for alternate security in the district court. Id. Additionally, to the extent that appellant seeks any other relief in his stay motion, we deny that request.

cc: Hon. Jackie Glass, District Judge
Charles N. Belssner
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Eighth District Court Clerk