

IN THE SUPREME COURT OF THE STATE OF NEVADA

VANESSA CUNNINGHAM, AN  
INDIVIDUAL; AND HUGH  
CUNNINGHAM, AN INDIVIDUAL,  
Appellants,  
vs.  
JEFFERY CRATTY, AN INDIVIDUAL,  
Respondent.

No. 48992

**FILED**

DEC 21 2007

ANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER DISMISSING APPEAL

Appellants have filed a "Motion for Voluntary Dismissal of Appeal." In that motion, appellants represent that the amount in controversy was been paid to respondent by appellants' insurance carrier after the notice of appeal was filed. Appellants request this matter be dismissed with each party to bear their own costs and attorney fees. See NRAP 42(b).


Respondent has filed a response to that motion. Respondent "concurrs that dismissal is appropriate." Respondent argues, however, that dismissal is appropriate because the appeal is jurisdictionally defective and thus was "improperly taken." Because of the purported jurisdictional defect, respondent requests that this court impose sanctions against appellant by awarding respondent "costs on appeal and such attorney fees as this Court deems appropriate."

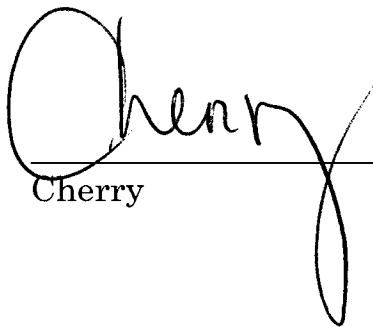
We note that under NRAP 38(b) this court may award costs on appeal and attorney fees "when an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the


court below; or whenever the appellate processes of this court have otherwise been misused.”

The filing of an appeal that may be jurisdictionally defective does not, in itself, rise to the level of abuse of the appellate process as contemplated by NRAP 38. Accordingly, we deny respondent’s request for an award of costs and attorney fees. Further, we grant appellants’ unopposed motion for voluntary dismissal of this appeal and we dismiss this appeal.<sup>1</sup>

It is so ORDERED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Jessie Elizabeth Walsh, District Judge  
William F. Buchanan, Settlement Judge  
Law Offices of Douglas R. Johnson  
Law Office of Eric A. Daly, LLC  
Law Office of Vicki L. Driscoll  
Eighth District Court Clerk

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<sup>1</sup> In light of this dismissal, we deny respondent’s motion to dismiss this appeal for lack of jurisdiction as moot.

<sup>2</sup> Cause appearing, we grant appellants’ motion for leave to file an untimely docketing statement. Accordingly the clerk shall file the docketing statement provisionally received on May 21, 2007.