


IN THE SUPREME COURT OF THE STATE OF NEVADA

RHODES RANCH LIMITED  
PARTNERSHIP, D/B/A RHODES  
HOMES,  
Appellant,  
vs.  
RICHARD KLUTMAN AND NEREIDA  
KLUTMAN, HUSBAND AND WIFE,  
Respondents.

No. 49644

**FILED**

APR 25 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a post-judgment order awarding attorney fees and costs.<sup>1</sup> Eighth Judicial District Court, Clark County; Valorie Vega, Judge. Appellant contends that attorney fees and costs were improperly awarded because respondents did not timely request them.

Appellant first contends that the attorney fee award was improper because respondents' motion for attorney fees was filed after the time in which an appeal from the underlying judgment could have been taken, in violation of our opinion in Collins v. Murphy.<sup>2</sup> We agree.

In Collins, we vacated an attorney fees award under NRS 18.010(2)(a) because the motion for attorney fees was filed after the time to appeal had already run. We noted that the appellants' decision whether to appeal would have been impacted by the possibility of being held

---

<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>113 Nev. 1380, 951 P.2d 598 (1997).

responsible for several thousand dollars in attorney fees. The crux of Collins is that an attorney fees award is improper if the party seeking fees failed to provide notice to the other side that fees would be sought in time for that fact to be considered in deciding whether to appeal from the underlying judgment.<sup>3</sup> Notably, the judgment in Collins was for just over \$5,000, while the attorney fees award was almost ten times that amount, almost \$50,000.<sup>4</sup> Similarly, in this case, the judgment was for approximately \$22,000, while the attorney fees award was over \$190,000.

Here, the February 9, 2007 judgment resolved all claims as to all parties, except for post-judgment issues such as attorney fees and costs, and thus it was the appealable final judgment.<sup>5</sup> Notice of the judgment's entry was served by mail on February 12, 2007, so the time in which a notice of appeal could be filed expired on March 19, 2007.<sup>6</sup> Respondents did not file their motion for attorney fees until almost a month later, on April 13, 2007. The district court concluded that the motion was nevertheless timely, because it had given respondents until April 13, 2007, to file their attorney fees motion and memorandum of costs. But the district court's purported extension occurred at a hearing held on April 11, 2007, well after the appeal time had already expired. Accordingly, our

---

<sup>3</sup>Id. at 1384, 951 P.2d at 600-01.

<sup>4</sup>Id.

<sup>5</sup>See NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).


<sup>6</sup>See NRAP 4(a)(1); NRAP 26(c).

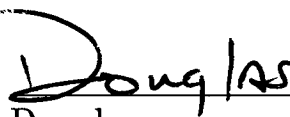
holding in Collins precluded an attorney fees award in this case, and we reverse the attorney fees award.

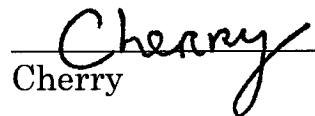
Appellant also contends that the district court's costs award must also be reversed, because respondents failed to file their memorandum of costs within the time required by NRS 18.110(1). But we have held that the time to file a memorandum of costs is not jurisdictional,<sup>7</sup> unlike the time to file a notice of appeal.<sup>8</sup> Here, the district court granted an extension of time to file the memorandum of costs, and respondents complied within the extended time period. Moreover, we perceive no abuse of discretion in the district court's award of costs.<sup>9</sup> We therefore affirm the costs award.

Since the attorney fees award was improper, but the district court did not abuse its discretion in awarding costs, we

ORDER the district court's order awarding attorney fees and costs AFFIRMED IN PART AND REVERSED IN PART.

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

  
\_\_\_\_\_, J.  
Douglas

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

<sup>7</sup>Eberle v. State ex rel. Redfield Trust, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992).

<sup>8</sup>See Matter of Application of Duong, 118 Nev. 920, 922, 59 P.3d 1210, 1212 (2002).

<sup>9</sup>Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

cc: Hon. Valorie Vega, District Judge  
Nitz Walton & Heaton, Ltd.  
Nehme-Tomalka & Associates  
Eighth District Court Clerk