

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE WILLIAMS,
Appellant,
vs.
EMMANUEL WASHINGTON,
Respondent.

No. 50081

FILED

JUN 23 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order entering a default judgment against the appellant and awarding attorney fees and costs to the respondent. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

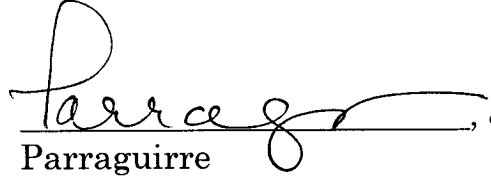
When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, the notice of appeal appeared untimely under NRAP 4(a) because it was filed more than 33 days after service of written notice of the July 10, 2007, appealed order's entry. See NRAP 4(a)(1) (providing that an appeal must be filed within 30 days from service of the appealed order's notice of entry); NRAP 26(c) (adding three days to the appeal period if service was by mail). Appellant has timely responded to the show cause order.

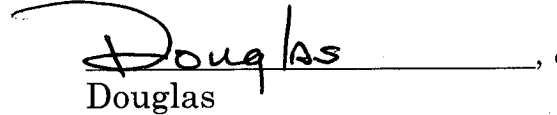
According to the certificate of service, the July 10 order's written notice of entry was served by mail on July 17, 2007. Appellant's August 23, 2007, notice of appeal was filed more than 33 days from that date. Appellant argues, however, that he received the notice on July 23, 2007, and calculated the timeliness of his notice of appeal from that date.

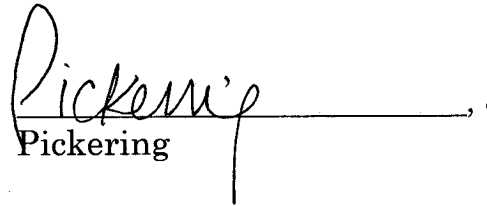
But NRAP 4(a)(1) provides that the appeal period starts from the date when the notice of entry is served, not when it is received.

“Service by mail is complete upon mailing.” Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983); see NRAP 25(1)(c); NRCP 5(b)(2)(B). Accordingly, since the July 10 order’s written notice of entry was served on July 17, 2007, appellant’s appeal was untimely. As we lack jurisdiction over an untimely appeal,¹ Winston Products Co. v. DeBoer, 122 Nev. 517, 519, 134 P.3d 726, 728 (2006), we

ORDER this appeal DISMISSED.

 , J.
Parraguirre

 , J.
Douglas

 , J.
Pickering

cc: Hon. James M. Bixler, District Judge
Carolyn Worrell, Settlement Judge
David Lee Phillips & Associates
Hofland Beasley & Galliher
Eighth District Court Clerk

¹We reject appellant’s assertion that his “excusable neglect” should allow the late filing of his notice of appeal. The “timely filing of a notice of appeal is jurisdictional. Jurisdictional rules go to the very power of this court to act.” Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (citations omitted). Accordingly, this court has no authority to consider an appeal when the notice is filed after the appeal period has expired, and any such appeals must be dismissed.