

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHIRLEY COLLETTI-
MILTENBERGER, INDIVIDUALLY
AND AS TRUSTEE OF THE JIMMIE
MILTENBERGER AND SHIRLEY J.
MILTENBERGER REVOCABLE
LIVING TRUST AGREEMENT DATED
OCTOBER 26, 2000,

Appellant,

vs.

JIMMIE MILTENBERGER,
INDIVIDUALLY AND AS TRUSTEE OF
THE JIMMIE MILTENBERGER AND
SHIRLEY J. MILTENBERGER
REVOCABLE LIVING TRUST
AGREEMENT DATED OCTOBER 26,
2000,

Respondent.

No. 50250

FILED

MAY 09 2008

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

ORDER DISMISSING APPEAL

This is an appeal from the district court's findings of fact and conclusions of law and decree of divorce. Respondent filed a motion to dismiss this appeal on the ground that the notice of appeal was not timely filed within 30 days of June 12, 2007 – the date of service of written notice of entry of decree. See NRAP 4(a)(1). Appellant opposed the motion, arguing that no notice of entry of order was ever received by appellant's counsel. Instead, appellant served respondent with a notice of entry of judgment on September 12, 2007, and filed the notice of appeal within 30 days thereafter.

Because it appeared that a genuine issue of fact existed as to whether respondent actually mailed the notice of entry of decree to

appellant on June 12, 2007, this court remanded the matter to the district court for proceedings and findings relating to the factual issue.

Consistent with our order of remand, the district court has now filed its findings. Therein, the district court states that “[r]espondent has met the requisite legal standard in showing a notice of entry of decree was mailed on June 12, 2007.” Further, the district court indicates that appellant’s assertion that no notice of entry of decree was ever received is not credible. Accordingly, respondent is deemed to have mailed the notice of entry of decree on June 12, 2007.

A notice of appeal from a decree of divorce must be filed no later than 30 days after the date that written notice of entry of the judgment appealed from is served.¹ An untimely notice of appeal fails to vest jurisdiction in this court.² In this case, appellant was served with written notice of entry of the divorce decree on June 12, 2007. Thus, the notice of appeal was due to be filed on or before July 16, 2007.³ However, the notice of appeal was not filed in the district court until September 13, 2007, long after the 30-day appeal period prescribed by NRAP 4(a)(1) had

¹NRAP 4(a)(1).

²See NRAP 4(a)(1); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

³Appellant was entitled to 3 additional days as the notice of entry of decree was served by mail. NRAP 26(c); Healy v. Volkswagenwerk, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987).

expired.⁴ Accordingly, this court lacks jurisdiction to consider this appeal and it is hereby dismissed.

It is so ORDERED.



_____, J.
Maupin



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Chesnoff & Schonfeld
Sean K. Claggett
Graziadei & Cantor, Ltd.
Eighth District Court Clerk

⁴If successive notices of entry of orders are served, the 30-day limitation period begins to run from the date of service of the first notice of entry of order. Thus, appellant's notice of entry, served on September 12, 2007, has no effect on the time limitation for filing the notice of appeal. Healy, 103 Nev. at 330-31, 741 P.2d at 433.