

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES F. KELLY,
Appellant,
vs.
ALAN R. JOHNS,
Respondent.

No. 50286

FILED

JUL 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment after a court-annexed arbitration award in a breach of contract case. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

The arbitrator's decision and award was mailed to appellant on April 12, 2007, by regular and certified mail. According to appellant, he did not receive the copy of the decision sent by regular mail and did not receive the copy sent by certified mail until April 24, 2007. On May 24, 2007, appellant filed his request for trial de novo. That request was denied as untimely and the district court subsequently entered judgment on the arbitration award.¹ This appeal followed.

In general, mandatory court-annexed arbitration is nonbinding, and any party to the arbitration proceedings who timely files a trial de novo request has the right to a post-arbitration trial de novo in the district court.² Any party may file a request for trial de novo within 30 days after the arbitration award is served.³ Because the 30-day filing

¹On August 27, 2007, the district court also entered an order overruling appellant's objection to the denial of his trial de novo request.

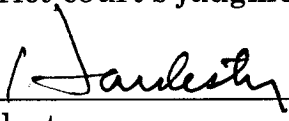
²Morgan v. Las Vegas Sands, Inc., 118 Nev. 315, 322, 43 P.3d 1036, 1040 (2002); NAR 18.

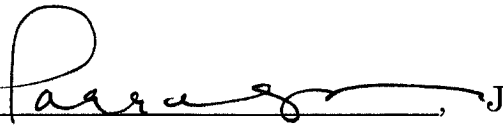
³NAR 18(A).

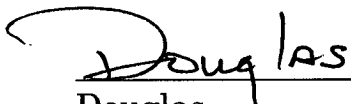
requirement is jurisdictional, the district court cannot consider an untimely trial de novo request.⁴ The calculation of the 30-day period runs from the date of service and not from the date of receipt.⁵

Here, the certificate of service for the arbitration award states that it was mailed on April 12, 2007; therefore appellant's request for trial de novo was due to be filed in the district court on or before May 15, 2007.⁶ Because appellant untimely filed his request for trial de novo on May 24, 2007, the district court did not err when it denied that request and judgment was properly entered on the arbitration award. Accordingly, we

ORDER the district court's judgment AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴NAR 18(B).

⁵NAR 18(A).

⁶See NRCP 6(e) (adding three days to the computation of time when service is by mail).

⁷Appellant also seeks to challenge the December 20, 2007, and January 17, 2008, orders denying appellant's miscellaneous motions. Because the notice of appeal from the August 27, 2007, judgment was filed on September 28, 2007, the district court was divested of jurisdiction and lacked authority to consider these motions. See Kantor v. Kantor, 116 Nev. 886, 894, 8 P.3d 825, 830 (2000) (stating that "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court") (citation omitted). Accordingly, the December 20 and January 17 orders are void, and we direct the district court to vacate those orders. We deny appellant's motion for stay as moot in light of this order.

cc: Hon. Mark R. Denton, District Judge
James F. Kelly
Alan R. Johns
Eighth District Court Clerk