

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ANTHONY JONES,
Appellant,

vs.

NDOC DIRECTOR JACKIE
CRAWFORD; ASSISTANT DIRECTOR
JOHN SLANSKY; WARDEN ESP E.K.
MCDANIEL; AWO DWIGHT NEVEN;
AWP ADAM ENDEL; FORMER AWP
WILLIAM A. DONAT; DALE JONE; D.
MCNEELY; AND JERRY DEFORREST,
Respondents.

No. 50369

FILED

JAN 09 2009

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

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is a proper person appeal from a district court order dismissing a complaint under NRCP 68(d) and striking appellant's bill of costs. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant filed a civil rights complaint against respondents. Eventually, respondents served an offer of judgment upon appellant, which offered appellant the sum of \$250 "exclusive of fees and costs." Appellant accepted the offer. A few weeks later, respondents paid the sum into appellant's inmate account.

Appellant then filed with the district court a notice that he had accepted an offer of judgment, but without attaching a copy of the offer; appellant did not ask the district court to enter judgment on the offer. Appellant also filed a bill of costs, itemizing approximately \$840 in costs. Following the itemization, the bill of costs included a "Declaration,"

stating in pertinent part that “I declare under penalty of perjury pursuant to NRS 208.165 that the foregoing costs are correct and were necessarily incurred in the action. . . .” The Declaration then certified that the bill of costs had been served on respondents’ counsel, and appellant’s signature followed.

Respondents filed a motion for case dismissal under NRCP 68(d), which allows a defendant to obtain a dismissal upon prompt payment of an offer of judgment, and to strike the bill of costs as premature and procedurally defective. Appellant did not respond to the part of the motion seeking case dismissal and opposed the portion of the motion seeking to strike the bill of costs. The district court granted respondents’ motion in its entirety, reasoning that NRCP 68(d) gave a defendant the option to obtain a dismissal rather than a judgment upon prompt payment of the offer and that, absent a judgment, no costs could be awarded under NRS 18.110. Appellant’s motion for reconsideration was denied, and this appeal followed.

Initially, appellant has not challenged on appeal the district court’s determination that a dismissal, rather than a judgment, was appropriate. Accordingly, we affirm the district court’s order with respect to its dismissal of the underlying case. See NRCP 68(d); NRS 17.115(2)(a).

We next consider whether the district court properly struck appellant’s bill of costs. In their response to appellant’s civil proper person appeal statement, respondents concede that under NRS 17.115(2)(b), an award of costs may be made regardless of whether the disposition pursuant to an accepted offer of judgment is termed a judgment or a dismissal. Respondents nevertheless contend that the district court’s

decision may be affirmed on the alternative basis that the bill of costs was procedurally defective because it was premature and was not properly verified. Appellant argues in reply that the bill of costs was timely and that, because the district court did not rule on the issue of whether the bill of costs was properly verified, the matter should be remanded to the district court for its decision.¹

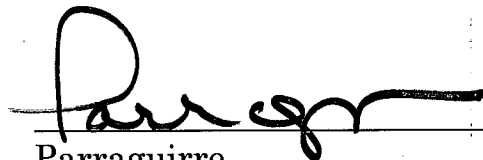
The fact that the bill of costs was technically premature, because it was filed before the final judgment was entered, does not require that it be stricken. See Randono v. Turk, 86 Nev. 123, 132-33, 466 P.2d 218, 224 (1970) (holding that a bill of costs filed nine months before final judgment was effective). And appellant's "Declaration," swearing under penalty of perjury that the costs were correct and necessarily incurred in the case, satisfies the requirement that a bill of costs be verified. See Black's Law Dictionary 1593 (8th ed. 1999); cf. NRS 132.360 (providing, in the context of wills and estates, that verification means "a declaration that a statement is true, made under oath or affirmation under penalty of perjury for false statement"). Therefore, the district court erred in striking appellant's bill of costs, and we reverse its decision

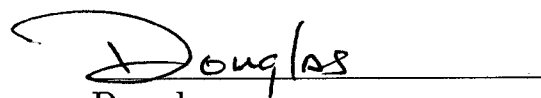
¹We deny as moot appellant's August 1, 2008, motion for leave to file a reply, inasmuch as appellant's reply was filed on September 15, 2008. Appellant filed a letter on July 15, 2008, that simply comments on respondents' motion for an extension of time to file their response; accordingly, no action on this letter is required.

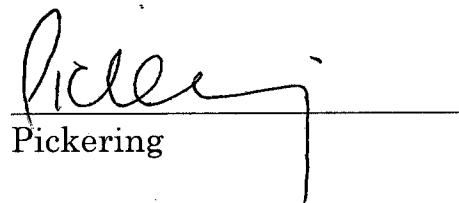
in this regard and remand this matter. Upon remand, the district court shall consider the merits of appellant's bill of costs.²

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Parraguirre

 _____, J.
Douglas

 _____, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
Christopher Anthony Jones
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk

²We note that the district court denied as moot respondents' motion to extend the time to file a motion to retax the costs. In light of our disposition, respondents should be provided a reasonable opportunity to file such a motion after issuance of the remittitur.