

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN WOLFF,
Appellant,
vs.
STEPHEN RYMSZA,
Respondent.

No. 51339

FILED

SEP 05 2008

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment upon a jury verdict and an order denying appellant's motion for a new trial or, in the alternative, to reduce the verdict in a short trial proceeding. Eighth Judicial District Court, Clark County; Ara H. Shirinian, Short Trial Judge.

On June 12, 2008, this court entered an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, we noted that because appellant had not included a file-stamped copy of her motion for a new trial in her docketing statement, we were unable to verify that a timely tolling motion had been filed.¹ Appellant filed a response to our June 12, 2008, order, in which she asserted that the motion's certificate of service is sufficient to establish that the motion was properly filed.² Appellant also noted that the short trial judge ruled on the motion for a new trial. Respondent subsequently

¹See NRCF 59(b); NRAP 4(a)(4).

²According to the certificate of service included in appellant's docketing statement, the motion for a new trial was served on the short trial judge and counsel for respondent on January 28, 2008.

filed a response and motion to dismiss this appeal because of a lack of transcripts.

An untimely notice of appeal fails to vest jurisdiction in this court.³ Unless stated otherwise in the short trial rules, “all documents must be filed and served in accordance with the provisions of the Nevada Rules of Civil Procedure.”⁴ The Nevada Rules of Civil Procedure require that a “motion for a new trial shall be filed no later than 10 days after service of written notice of the entry of the judgment.”⁵ Further, “the filing of pleadings and other papers with the court as required by [the Nevada Rules of Civil Procedure] shall be made by filing them with the clerk of the court.”⁶ Nevertheless, “the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.”⁷

Here, notice of entry of the judgment on the short trial verdict was served by mail on January 31, 2008. Accordingly, appellant had until February 21, 2008, to file a motion for a new trial⁸ or until March 4, 2008, to file a notice of appeal.⁹ Thereafter, appellant *served* her motion for a

³NRAP 4(a); *Alvis v. State*, 99 Nev. 184, 660 P.2d 980 (1983).

⁴NSTR 6.

⁵NRCP 59(b).

⁶NRCP 5(e).


⁷NRCP 5(e).

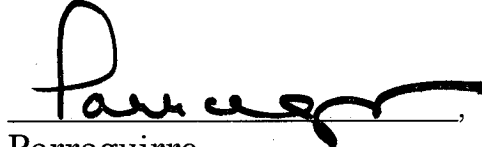
⁸See NRCP 59(b); NRCP 6(a),(e).

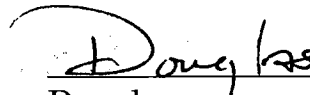
⁹See NRAP 4(a)(1); NRAP 26(c). Appellant filed the notice of appeal in the district court on March 24, 2008.

new trial on the short trial judge by mail on January 28, 2008. However, the short trial judge did not note the filing date on the motion for a new trial. Further, it does not appear that the short trial judge transmitted the motion to the clerk of the district court as the court's docket entries do not contain an entry for the filing of the motion. Accordingly, we conclude that the motion for a new trial was not "filed with the judge" under the rules outlined above. Because the failure to file the motion for a new trial did not toll the time period to file an appeal, the notice of appeal filed on March 24, 2008, was untimely. Accordingly, since jurisdiction failed to vest in this court, we

ORDER this appeal DISMISSED.¹⁰


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Ara H. Shirinian, Short Trial Judge
William F. Buchanan, Settlement Judge
David L. Riddle & Associates
Kolesar & Leatham, Chtd.
Eighth District Court Clerk

¹⁰In light of this order, we deny respondent's motion as moot.