

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN ROBERTS,

Appellant,

vs.

KEELY KLEMM MONTERO, F/K/A KEELY
KLEMM ROBERTS,

Respondent.

No. 34673

FILED

MAR 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schank*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order altering the custody of a minor child, and from an order denying reconsideration of the first order.

On June 21, 1999, the district court entered an order altering custody and granting primary physical custody to respondent. On June 23, 1999, written notice of entry of that order was served by mail. On June 25, 1999, appellant moved for reconsideration of the June order. On August 6, 1999, more than thirty-three days after service of the written notice of entry of the order, appellant filed a notice of appeal from the June order. On September 1, 1999, the district court denied the motion for reconsideration of the issue of custody, and reduced appellant's child support obligation to account for the cost of the child's health insurance. On September 7, 1999, written notice of entry of that order was served by mail. On September 13, 1999, appellant timely filed a notice of appeal from that order.

Our preliminary review of the documents submitted to this court pursuant to NRAP 3(e) revealed several potential jurisdictional defects. Accordingly, this court issued an order to show cause why this appeal should not be dismissed for lack of jurisdiction, to which appellant filed a response.

First, the notice of appeal from the June order appears to be untimely filed under NRAP 4(a) because it was filed more than thirty-three days after service of written notice of entry of the order. See NRAP 4(a)(1); NRAP 26(c). In response, appellant's counsel argues that he was unaware that the notice of appeal was filed on August 6, 1999, because he had signed a notice of appeal on June 29, 1999. The district court docket entries, filed with this court pursuant to NRAP 3(e), however, show that the initial notice of appeal was filed on August 6, 1999, and do not indicate that any notice of appeal was filed between June 29 and August 6, 1999. The notice of appeal itself, a copy of which was also filed with this court pursuant to NRAP 3(e), shows that it was both filed and dated August 6, 1999. We therefore conclude that the notice of appeal from the June order was untimely. See NRAP 4(a)(1); NRAP 26(c).

Second, it appears that the September order was not substantively appealable. See NRAP 3A(b). An order denying a motion for reconsideration is not an appealable order. *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980 (1983). In addition, the order does not appear to be a special order after final judgment, *Wilkinson v. Wilkinson*, 73 Nev. 143, 311 P.2d 735 (1957), because the order does not appear to change the rights of the parties growing out of the final judgment. Appellant responds that the motion for reconsideration, filed only a few days after the June order, sought an evidentiary hearing on the change of custody, arguing that a hearing was required before custody could be altered. The order denied reconsideration, and, as noted above, an order denying reconsideration is not an appealable order. See *Alvis*, 99 Nev.

at 186, 660 P.2d at 981. The proper vehicle to challenge the district court's decision to alter custody was an appeal from the June order, which in this instance, as we have already observed, was not pursued in a timely manner.

We conclude that this court lacks jurisdiction over this appeal. Accordingly, we

ORDER this appeal dismissed.

Maupin J.
Maupin

Shearing J.
Shearing

Becker J.
Becker

cc: Hon. Steven E. Jones, District Judge,
Family Court Division
George E. Cromer
Law Offices of Israel L. Kunin, P.C.
Clark County Clerk