

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY HARRIS,
Appellant,
vs.
SCOTT CONRAD,
Respondent.

No. 52210

FILED

AUG 25 2009

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

ORDER DISMISSING APPEAL

This is an appeal from an amended judgment on the jury verdict entered in a personal injury action. Our preliminary review of the docketing statement and the documents submitted to the court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Specifically, it appeared that the amended judgment designated in the notice of appeal was not substantively appealable because it merely added to the original judgment the attorney fees and costs that had been awarded in a separately appealable post-judgment order. See NRAP 3A(b)(2); see also Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (explaining that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule). It also appeared that the notice of appeal was untimely filed as to the original judgment, and that no timely notice of appeal was filed from the order awarding costs and attorney fees. See NRAP 3A(b)(2) and 4(a)(1); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 185, 660 P.2d 980, 980-81 (1983) (explaining that an untimely notice of appeal fails to vest jurisdiction in this court); Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). Accordingly, this court ordered appellant to

show cause why this appeal should not be dismissed for lack of jurisdiction.

Appellant timely filed his response to our show cause order, and respondent has filed a reply, as permitted. Appellant concedes that the notice of appeal was untimely filed as to the judgment on the jury verdict.¹ However, relying on this court's decision on Ross v. Giacomo, appellant contends that the untimely notice of appeal should be "deemed timely" because respondent created a confusing situation by serving two notices of entry. 97 Nev. 550, 553-54, 635 P.2d 298, 300 (1981) (overruled on other grounds by Winston Products Co. v. DeBoer, 122 Nev. 517, 526, 134 P.3d 726, 732 (2006)).

Appellant's reliance on Ross is misplaced. In Ross, the appellant served the respondent with two notices of entry of the same order. This court held that by serving two notices of entry, the respondent created a confusing situation from which he should not be allowed to benefit. Id. As a result, the second notice of entry vitiated the first, causing the time to file the notice of appeal to begin to run from the date of service of the second notice of entry. Id. Here, respondent served appellant with two notices of entry, but those notices pertained to two

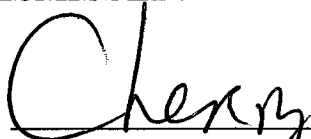
¹Appellant was served with written notice of entry of the judgment on May 8, 2008, and with written notice of entry of the order granting respondent's motion for attorney fees on June 25, 2008. The notice of appeal was not filed in the district court until August 7, 2008.


different orders.² Thus, there was no confusing situation here as occurred in Ross.

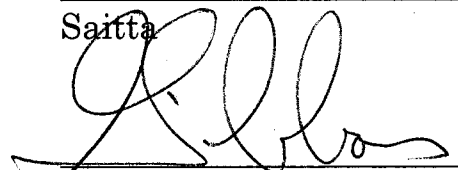
Appellant does not dispute that the amended judgment on the jury verdict is substantively unappealable. We elect to treat this as an admission that this court lacks jurisdiction over the appeal of that order. Cf. King v. Cartridge, 121 Nev. 926, 927-28, 124 P.3d 1161, 1162 (2005) (stating that the district court has discretion to consider the failure to oppose a motion as an admission of merit and as consent to granting the same).

Accordingly, as appellant's notice of appeal was filed more than 33 days after service of written notice of entry of the final judgment on the jury verdict and of the order granting attorney fees, NRAP 4(a)(1) and 26(c), and as the amended judgment on jury verdict is not substantively appealable, we conclude that this court lacks jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

²Specifically, appellant was served with the above-mentioned written notice of entry regarding attorney fees on June 25, 2008, and with written notice of entry of the amended judgment on July 15, 2008.

cc: Hon. Jessie Elizabeth Walsh, District Judge
E. Paul Richitt Jr., Settlement Judge
Keith B. Gibson
Caruso Law Offices
Eighth District Court Clerk