

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARLENE KIRCH, AN INDIVIDUAL,
AND MICHAEL KIRCH, AN INDIVIDUAL,
AND AS HUSBAND AND WIFE,
Appellants,

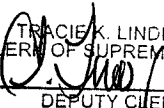
vs.

VALLEY HOSPITAL MEDICAL CENTER,
INC., A NEVADA CORPORATION; AND
STAFFING SPECIALISTS, INC., A
NEVADA CORPORATION,
Respondents.

No. 53298

FILED

AUG 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY:  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing a medical malpractice complaint. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Respondent Valley Hospital Medical Center, Inc., filed a motion, joined by respondent Staffing Specialists, Inc., to dismiss this appeal on the ground that the notice of appeal, which designates a December 30, 2008, district court order, was untimely. Specifically, the notice of appeal appeared to be untimely under NRAP 4(a) because it was filed more than 33 days after service of written notice of the December 30 order's entry. See NRAP 4(a)(1) (providing that an appeal must be filed within 30 days from service of the appealed order's entry); NRAP 26(c) (adding three days to the appeal period if service was by mail).

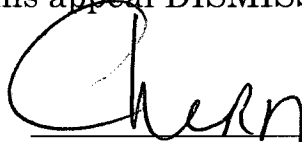
According to the certificate of service, the December 30 order's written notice of entry was served by mail on January 5, 2009. Appellants' February 12, 2009, notice of appeal was filed more than 33 days from that date, and thus appeared untimely.


Nonetheless, appellants opposed the motion, asserting that, respondents' certificate of service notwithstanding, they never received


written notice of the December 30 order's entry. Appellants suggested in their opposition that perhaps respondents mailed the written notice of entry to an incorrect address. Appellants' suggestion that they did not receive written notice of the appealed order's entry raised a legitimate question of fact that this court was ill-suited to resolve, as we are not a fact-finding tribunal. Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Therefore, we entered an order on May 4, 2009, remanding this case to the district court for proceedings and findings regarding the factual question raised in the motion to dismiss and the opposition thereto. Our May 4 order directed the district court to certify its findings and transmit them to this court.

Currently before us are the district court's July 8, 2009, findings on remand, filed in this court on July 23, 2009. In its findings, the district court notes that the January 5, 2009, written notice of the appealed order's entry was properly served at appellants' counsel's correct address. As written notice of the challenged order's entry was properly served on January 5, 2009, appellants' February 12, 2009, notice of appeal is untimely, and we thus lack jurisdiction to consider this appeal. See NRAP 4(a)(1); NRAP 26(c). Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Stephen E. Haberfeld, Settlement Judge
Breen Arntz
Cotkin & Collins
Lauria Tokunaga Gates & Linn, LLP
Eighth District Court Clerk