

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WILLIAM FOLEY, JR.,

Appellant,

vs.

THOMAS E. ELARDI AND INVESTMENT
EQUITY, A NEVADA CORPORATION,

Respondents.

No. 34957

FILED

MAY 23 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting, in part, respondents' motion for summary judgment. Respondents have filed a motion to dismiss this appeal for lack of jurisdiction. Appellant opposes the motion.¹

Based upon our review of the motion to dismiss, the opposition, and other documents before this court, we conclude that we lack jurisdiction to consider this appeal because the notice of appeal was untimely filed. A notice of appeal must be filed no later than thirty days after the date of service of written notice of entry of the order. NRAP 4(a). If service is accomplished by mail, an additional three days is added to the prescribed period for filing the notice of appeal. NRAP 26(c).

Here, appellant's notice of appeal was due on October 6, 1999, thirty-three days after service of notice of entry of the order by mail. Appellant's notice of appeal, filed on October 7, 1999, was filed one day late. An untimely notice of appeal fails to vest jurisdiction in this court.

¹In light of our disposition of this appeal, we deny respondents' motion to file a reply to the opposition as moot.


See *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980 (1983).


Further, while this issue was not raised by the parties, we conclude that the order granting partial summary judgment was improperly certified as final pursuant to NRCP 54(b). Certification of an order as final pursuant to NRCP 54(b) is improper if the claims asserted in an action are so closely related that this court must necessarily decide important issues pending below in order to decide the issues appealed. *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441 (1986).

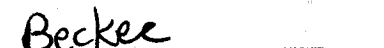
Appellant's claims for fraud and fraud in the inducement at issue on appeal are closely related to appellant's claims for civil conspiracy and breach of contract and respondents' counterclaims for breach of contract and deficiency judgment, which remain pending below. All of the claims arose from the same real estate transaction. Thus, NRCP 54(b) certification of the order granting partial summary judgment was not proper.

Accordingly, having concluded that we lack jurisdiction to consider this appeal, we grant respondents' motion to dismiss, and we dismiss this appeal without prejudice to appellant's right to appeal from a final judgment.

It is so ORDERED.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Mark R. Denton, District Judge
Brian K. Berman
Hale Lane Peek Dennison Howard & Anderson
Clark County Clerk