

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK BUENROSTRO,  
Appellant,  
vs.  
FORMAN AUTOMOTIVE, INC., D/B/A  
UNITED NISSAN,  
Respondent.

No. 54859

**FILED**

**FEB 05 2010**

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

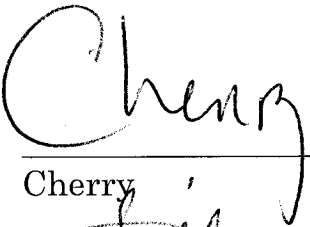
ORDER DISMISSING APPEAL


This is an appeal from an October 1, 2009, default judgment. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

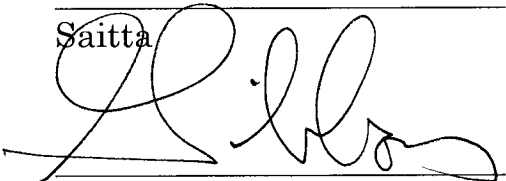
Respondent has moved to dismiss this appeal, asserting that it was untimely filed more than 33 days after service of any applicable written notice of entry. Although appellant opposes the motion, arguing that it was timely filed after service of written notice of entry of the final judgment, we agree with respondent that the appeal is untimely.

The district court entered summary judgment in favor of respondent, a defendant below, in February 2009, and written notice of that order's entry was served shortly thereafter. Then, on September 21, 2009, the district court entered an order granting appellant's motion for default judgment against the remaining two defendants. Written notice of the September 21 order was served on September 23, 2009. Thereafter, on October 1, 2009, the district court entered a default judgment in favor of appellant; the October 1 judgment, however, merely duplicated the September 21 order. Accordingly, the September 21 order was the final, appealable judgment below. NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Taylor v. Barringer, 75 Nev. 409, 344 P.2d 676 (1959).

Written notice of the September 21 order's entry was served by mail on September 23, 2009, more than 33 days before the notice of appeal was filed on October 28, 2009. Accordingly, this appeal is untimely, NRAP 4(a)(1); NRAP 26(c), and we grant the motion and  
ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Stephen E. Haberfeld, Settlement Judge  
Law Offices of Leslie Mark Stovall  
Stephenson & Dickinson  
Eighth District Court Clerk