

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA SCHEER,
Appellant,
vs.
FORD MOTOR COMPANY,
Respondent.

No. 58515

FILED

SEP 04 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF SUMMARY AFFIRMANCE

This is an appeal from a district court order denying a new trial. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

On June 14, 2012, this court dismissed as untimely the portion of this appeal relating to the final judgment, because appellant's November 17, 2010, motion for a new trial was untimely filed and thus failed to toll the 30-day appeal period. NRAP 4(a)(4); NRCPC 6 and NRCPC 59(b); Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726 (2006). In our June 14 order, we also directed appellant to, within 30 days, show cause why the order denying a new trial should not be summarily affirmed, on the basis that the new trial motion was untimely.

Instead of filing a response to the show cause order, appellant filed a petition for rehearing, arguing that the appeal from both the final judgment and the order denying a new trial should be allowed to proceed because any untimely filing constituted excusable neglect and the terminating sanction based thereon substantially prejudiced appellant and impeded Nevada's policy of adjudicating cases on their merits. Appellant argued that she filed the motion under a reasonable interpretation of NRCPC 6(e), and thus, the appeal should not be dismissed

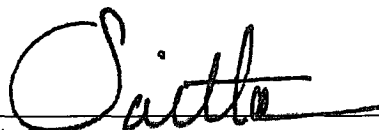
even though this court concluded that her interpretation was incorrect. Her rehearing petition was denied on July 26, 2012.

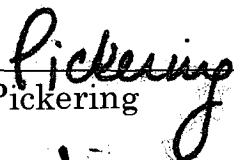
Accordingly, we summarily affirm the district court's order denying appellant a new trial. As we noted in our June 14 order, new trial motions must be filed within ten days from the date when notice of the final judgment's entry is served. NRCP 59(b). Under NRCP 6(a), this ten-day period does not include weekends and nonjudicial days. Further, under NRCP 6(e), three days are added to the ten-day period when the notice of entry is served by mail or electronic means. To calculate the due date, the ten-day period is determined and then the three days are added to that date; unlike the ten-day filing period, the three-day mailing period includes weekends and nonjudicial days. Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726 (2006); see also Nalty v. Nalty Tree Farm, 654 F. Supp. 1315, 1318 (S.D. Ala. 1987) (recognizing that the final day of the three-day mailing period could land on a weekend or nonjudicial day), discussed with approval in Winston Products, 122 Nev. at 522, 134 P.3d at 729-30 (noting that federal decisions interpreting analogous rules are persuasive authority); Comments on 2005 Amendments to FRCP 6(e) ("Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days.").

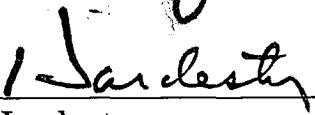
Here, the ten-day period commenced the day after notice of the final judgment's entry was served, October 28, 2010, and ended on Friday, November 12, 2010. Adding three days onto that date would mean that the new trial motion was due by Monday, November 15, 2010. As a result, appellant's November 17, 2010, new trial motion was untimely, and the district court properly denied it. Ross v. Giacomo, 97 Nev. 550, 553, 635 P.2d 298, 300 (1981) ("Untimely motions for new trial . . . must be

denied.”), overruled on other grounds by Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726; see also LVCVA v. Secretary of State, 124 Nev. 669, 689 n.58, 191 P.3d 1138, 1151 n.58 (2008) (“[W]e will affirm the district court if it reaches the right result, even when it does so for the wrong reason.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Saitta

 _____, J.
Pickering

 _____, J.
Hardesty

cc: Hon. Mark R. Denton, District Judge
Leonard I. Gang, Settlement Judge
Christensen Law Offices, LLC
Snell & Wilmer, LLP/Las Vegas
Eighth District Court Clerk