

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTH SHORE HOMEOWNERS
ASSOCIATION, A NEVADA NON-
PROFIT CORPORATION; AND JAMES
BRANNAN, INDIVIDUALLY AND ON
BEHALF OF THE CLASS MEMBERS
AT SOUTH SHORE HOMEOWNERS
ASSOCIATION,
Appellants,
vs.
R.K. ROOFING, INC.,
Respondent.

No. 36771

FILED

JUN 25 2002

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing appellants' construction defect action against respondent for failure to timely serve the summons and complaint. When our review of the documents submitted to this court revealed a potential jurisdictional defect, we ordered appellants to show cause why their appeal should not be dismissed. We were concerned that the district court's order was not a final, appealable judgment because it did not resolve the rights and liabilities of all the parties, and was not certified as final under NRCP 54(b).¹ Specifically, when the notice of appeal was filed on September 14, 2000, the rights and liabilities of defendant Cedar Roofing, Inc. remained

¹See Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

for resolution. Thus, appellants' notice of appeal was premature, and failed to vest jurisdiction in this court.²

Cedar Roofing remained in the case until its formal dismissal on February 13, 2001. Notice of entry of Cedar Roofing's dismissal was served by mail the following day, but no amended notice of appeal was filed within thirty-three days of the notice of entry's service.³ Appellants' failure to timely file a notice of appeal from the February 13, 2001 dismissal is fatal to this court's jurisdiction.⁴

Appellants' reliance on Knox v. Dick,⁵ for the proposition that the September 14, 2000 notice of appeal operates prospectively to cover the February 13, 2001 dismissal, is misplaced. In Knox, we concluded that a premature notice of appeal from a partial judgment "will be regarded as directed to" a district court's belated NRCP 54(b) certification of the partial judgment.⁶ We characterized the belated certification as an excusable "technical defect."⁷ But Knox has been specifically limited to its facts. We recognized Knox's limitation when we said in Rust v. Clark

²See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

³See NRAP 4(a)(1); NRAP 26(c).

⁴See Rust, 103 Nev. at 688, 747 P.2d at 1381.

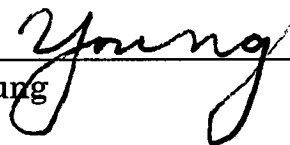
⁵99 Nev. 514, 665 P.2d 267 (1983).

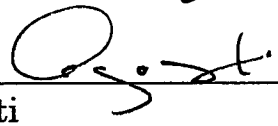
⁶Id. at 517, 665 P.2d at 269.

⁷Id.

County School District⁸ that “a premature notice of appeal is ineffective to vest jurisdiction in an appellate court to review a subsequently entered final judgment.”⁹ We conclude that Knox does not apply in this case because the district court subsequently entered a separate, appealable order instead of certifying an existing order as final. Accordingly, because we lack jurisdiction over this appeal, we

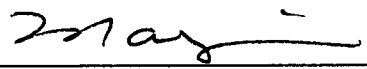
ORDER this appeal DISMISSED.


_____, J.
Young


_____, J.
Agosti

MAUPIN, C.J., dissenting:

Because of my views of the rule applied in this case, I dissent.


_____, C.J.
Maupin

cc: Hon. Gene T. Porter, District Judge
Michael V. Denticco, Settlement Judge
Schofield Chelini
Ryan, Marks, Johnson & Todd
Clark County Clerk

⁸103 Nev. 686, 747 P.2d 1380 (1987).

⁹Id. at 690, 747 P.2d at 1383.