

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. BEIERSCHMITT, AN
INDIVIDUAL,

Appellant,

vs.

KIRK SHAWN SMITH, D.O., AN
INDIVIDUAL,

Respondent.

No. 77082

FILED

MAR 22 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order dismissing a medical malpractice action. Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge; Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge; Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.


Respondent has filed a motion to dismiss the appeal as untimely. NRAP 4(a). Appellant opposes the motion, and respondent has filed a reply.¹

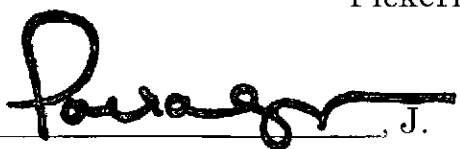
Having considered the motion and opposition, the court agrees with respondent that the notice of appeal was untimely filed. Appellant challenges the district court's order dismissing the sixth cause of action. The court dismissed the claim on August 9, 2017, with written notice of entry served on August 10, 2017; and denied a motion for reconsideration on


¹Cause appearing and notwithstanding its untimeliness, appellant's motion and supplemental motion for an extension of time to file an opposition to the motion to dismiss are granted. The clerk shall detach the opposition, attached as Exhibit 3 to the supplemental motion filed on March 7, 2019, and file it separately. The clerk shall file respondent's reply in support of the motion to dismiss, received on March 14, 2019.

November 16, 2017, with written notice of entry served on November 17, 2017. Appellant filed a notice of appeal on December 12, 2017, which this court dismissed because appellant's additional claims remained pending. *Beierschmitt vs. Smith, D.O*, Docket No. 74732 (Order Dismissing Appeal, March 14, 2018). The district court dismissed the remaining claims pursuant to stipulation on July 19, 2018, with written notice of entry served electronically on August 8, 2018. Appellant filed the notice of appeal on September 25, 2018, after expiration of the 30-day time frame provided in NRAP 4(a)(1). Appellant submits that the notice of appeal was "inadvertently" filed "approximately two weeks late." Appellant proposes the error was excusable neglect. This court "may not extend the time to file a notice of appeal except as provided in Rule 4(c)." NRAP 26(b)(1). Accordingly, the motion to dismiss is granted, and this court

ORDERS this appeal DISMISSED.²


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

²The court takes no action on respondent's motion for leave to file a motion to dismiss in excess of the page limits. The motion to dismiss was filed on February 19, 2019.

Appellant's motion to stay the deadline for filing the opening brief and appendix is denied as moot.

cc: Chief Judge, The Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Hon. Linda Marie Bell, Chief Judge
Lansford W. Levitt, Settlement Judge
Sgro & Roger
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk