

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBY LEN FRANKLIN, A/K/A
NATURAL FATHER OF RHONDA
JEAN FRANKLIN, D/B/A DAYDREAM
LAND & SYSTEMS DEVELOPMENT
SE CORNER OF SEC. 16 LAUGHLIN,
NEVADA,

Appellant,

vs.

ROBERT P. BILBRAY, A/K/A
LAUGHLIN PUBLIC WORKS CHAIR
CLARK COUNTY, D/B/A BILBRAY
INDUSTRIES, RB PROPERTIES,
SOUTH POINTE INDUSTRIES, SOUTH
POINTE PROPERTIES, GNATS
LANDING; JACKIE BRADY, A/K/A
LAUGHLIN TOWN MANAGER; BILLY
MOMA, A/K/A INVALID MINING
CLAIMANT, D/B/A LAUGHLIN
JUSTICE OF THE PEACE; BRUCE L.
WOODBURY, A/K/A CLARK COUNTY
COMMISSIONER FOR DISTRICT A;
JERRY KELLER, SHERIFF, LAS
VEGAS METROPOLITAN POLICE
DEPARTMENT IN AND FOR CLARK
COUNTY; JAMES DAVENPORT, A/K/A
DEPUTY ATTORNEY GENERAL FOR
THE NEVADA COLORADO RIVER
COMMISSION; GERALD A. LOPEZ,
A/K/A SENIOR DEPUTY ATTORNEY
GENERAL FOR THE NEVADA
COLORADO RIVER COMMISSION;
AND THE STATE OF NEVADA,

Respondents.

No. 37208

FILED

JAN 09 2002

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order dismissing appellant's action with prejudice. Several respondents have moved to dismiss this appeal, on the basis that we lack jurisdiction. After reviewing the motion, appellant's opposition,¹ and the record on appeal, we grant the motion and dismiss this appeal.

¹Although appellant was not granted leave to proceed in proper person, see NRAP 46(b), we have received and considered his submissions. We deny as moot appellant's motions and requests, as well as respondents' motion to strike.

On September 22, 2000, the district court entered a written order dismissing the underlying action with prejudice as to all defendants. Written notice of this order's entry was served by mail on September 29, 2000. On October 2, 2000, appellant filed in the district court a motion for rehearing and a motion for default judgment against Bilbray Industries and RB Properties; these entities opposed the motion and countermoved to set aside the earlier default. Additionally, on October 6, 2000, appellant filed a motion for an "order to file the requested information and his reports into the record for jury trial." Then, on October 17, 2000, appellant filed a demand for jury trial. On November 13, 2000, appellant filed another motion, to stay all proceedings pending an investigation of corruption and criminal misconduct. Subsequently, on November 27, 2000, the district court entered an order denying appellant's motion for default judgment, granting the countermotion to set aside the default, denying appellant's petition for rehearing and denying as moot appellant's motions to file requested information and reports and for a jury trial.² On December 19, 2000, eighty-one days after written notice of the district court's dismissal order was served, appellant filed his notice of appeal.

Under NRAP 4 (a)(1), a notice of appeal must be filed after the written judgment is entered and no later than thirty days after written notice of the judgment's entry is served. If this written notice is served by mail, then an additional three days is added to the thirty-day period under NRAP 26(c). Thus, appellant was required to file his notice of appeal by November 1, 2000.

Additionally, although timely motions under NRCP 50(b), NRCP 52(b), NRCP 59(a) and NRCP 59(e) serve to toll the time for filing a notice of appeal,³ a motion for reconsideration does not.⁴ Thus, appellant's petition for reconsideration had no effect on the time in which he was required to file his notice of appeal.

Even though appellant asserts that he is also appealing from post-judgment orders under NRAP 3A(b)(2), including the order denying default judgment and setting aside the default, and that his appeal was

²This order did not resolve the motion for stay.


³NRAP 4(a)(2).

⁴Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

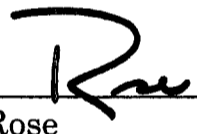
timely as to the district court's November 27, 2000 order, we note that the November 27, 2000 order was not an appealable special order after final judgment under NRAP 3A(b)(2). Such an order must change the rights and liabilities of the parties arising from the final judgment.⁵ Here, the district court's September 22, 2000 order was the final judgment, as it dismissed the underlying action with prejudice as to all defendants.⁶ The court's November 27 order was not a special order after final judgment, however, as it did not revise any rights or liabilities settled by the final judgment. In fact, in denying the default judgment and setting aside the default, the November 27 order was consistent with the September 22 dismissal order.

As appellant's notice of appeal was not timely with respect to the September 22, 2000 order, and as the November 27 order was not an appealable special order after final judgment, we conclude that we lack jurisdiction over this appeal. We therefore grant respondents' motion and dismiss this appeal.


It is so ORDERED.



Shearing J.



Rose J.



Becker J.

cc: Hon. Gene T. Porter, District Judge
Attorney General, Carson City
Attorney General, Las Vegas
Clark County District Attorney
Rawlings Olson Cannon Gormley & Desruisseaux
Bobby Len Franklin
Clark County Clerk

⁵See, e.g., Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957).

⁶See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).