

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARWIN BARTON,
Appellant,
vs.
NATIONSBANC,
Respondent.

No. 38678

FILED

FEB 19 2003

ORDER DISMISSING APPEAL

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

This appeal was docketed in this court on October 29, 2001. On that same date, this court issued a notice to appellant to pay the filing fee and to file the case appeal statement within 10 days. See NRAP 3(a)(1) and (f) (the case appeal statement shall be filed with the notice of appeal; payment of the filing fee shall be made at the time of the filing of the notice of appeal). More than one month later, on December 10, 2001, appellant paid the filing fee. However, appellant still had not filed the case appeal statement.

On December 5, 2001, respondent filed a motion to dismiss this appeal. Respondent contended that the appeal should be dismissed because appellant failed to take "further steps to prosecute this appeal." Specifically, appellant still had not filed the case appeal statement pursuant to this court's October 29, 2001, notice, and the docketing statement. See NRAP 14(b) (the docketing statement shall be filed within 15 days after the docketing of an appeal). On December 24, 2001, appellant filed an untimely opposition to the motion to dismiss. See NRAP 27(a). On April 17, 2002, this court entered an order denying the motion to dismiss and directing appellant to file and serve the case appeal statement and the docketing statement within 10 days from the date of that order.

On April 23, 2002, over 5 months after our initial notice directing appellant to file the case appeal statement, appellant filed the case appeal statement. However, the case appeal statement was procedurally deficient because it was not filed in the district court. See NRAP 3(a)(1). Accordingly, on April 30, 2002, this court entered an order noting that the case appeal statement was procedurally deficient and informing counsel for appellant that in the future this court expects him to comply with all procedural rules. That order also reinstated briefing as the parties were unable to agree to a settlement and directed appellant to comply with NRAP 9(a) by May 15, 2002.

Because appellant still had not filed the required documents, on July 2, 2002, this court entered yet another order directing appellant to file the docketing statement and to comply with NRAP 9(a) by July 12, 2002. On July 17, 2002, appellant untimely filed a certificate of no transcript request and the docketing statement.


On September 10, 2002, respondent filed a second motion to dismiss this appeal. In support of the motion, respondent asserts that this appeal should be dismissed pursuant to NRAP 31(c) because appellant has failed to file the opening brief. In addition, respondent contends that appellant has “been late on all filings in the instant Appeal.”


As noted in our April 30, 2002, order reinstating briefing, the opening brief and appendix were due to be filed by August 28, 2002. To date appellant has failed to file and serve the opening brief and appendix or otherwise communicate with this court. In addition, appellant has not opposed the motion. In light of appellant’s repeated violations of this court’s rules and orders and appellant’s non-opposition to the motion to dismiss, we conclude dismissal of this appeal is appropriate. Accordingly,

we grant respondent's motion to dismiss this appeal for failure to file an opening brief. See NRAP 31(c).

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Jennifer Togliatti, District Judge
Herbert Sachs
Miles & Associates, LLP
Clark County Clerk