

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN J. MURRAY,
Appellant,
vs.
EMELITA A. MURRAY,
Respondent.

No. 38925

FILED

JUN 04 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a final divorce decree.

In 1995 respondent filed a complaint for divorce. For various reasons, the final written divorce decree was not entered until July 26, 2000. No notice of the decree's entry was filed or served upon appellant. Appellant did not immediately appeal from the decree.

The record reveals that throughout these proceedings, issues concerning appellant's visitation with the child have been addressed by the district court. Originally, in 1995, appellant was awarded temporary visitation with the child. The divorce decree suspended future visitation pending appellant's psychological evaluation, and appellant was allowed telephonic visitation with the child. Subsequently, in April 2001, the district court entered an order that granted appellant alternating visitation with the child for two days one week followed by five days the next week. Ultimately, in July 2001, the district court granted appellant visitation every other weekend. On November 21, 2001, the district court reaffirmed the visitation arrangement. In the interim, on November 14, 2001, a notice of entry as to a February 2001 temporary custody order was filed and served. On December 10, 2001, appellant filed a notice of appeal from the divorce decree. Appellant asserts that notice of the decree's entry

was achieved by the November 14, 2001 notice of entry as to the February order.

Here, the final divorce decree was entered on July 26, 2000. Instead of immediately appealing from the final decree, appellant waited approximately fifteen months before he filed a notice of appeal. It appears that appellant was under the mistaken impression that he could not file a notice of appeal until a written notice of entry was filed and served upon him. The record, however, does not contain a notice of entry for the final divorce decree, and it appears that none was ever served.

Under NRAP 4(a)(1), the time for filing a notice of appeal begins when the written judgment or final order is entered and expires thirty days “after the date of service of written notice of the entry of the judgment or order appealed from.” A proper and timely filed notice of appeal is jurisdictional.¹ Serving a written notice of a judgment’s entry simply triggers the thirty-day outer limitations period, and provides notice that this time limit has begun to run. Thus, a party can appeal as soon as a judgment is entered and before formal written notice of the judgment’s entry is served.

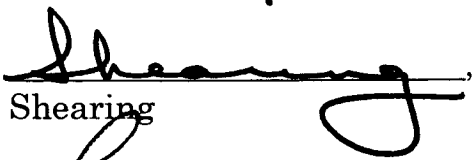
Even though NRAP 4(a)(1) prescribes a thirty-day appeal period after notice of a judgment’s entry is served, and it appears that no notice of the final decree’s entry was ever served in this case, appellant is precluded from raising issues pertaining to the 2000 divorce decree for two reasons. First, the doctrine of laches applies. Laches is an equitable doctrine that may be invoked when delay by one party works to the


¹Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).


disadvantage of the other, causing a change of circumstances that would make the grant of relief to the delaying party inequitable.² To invoke laches, however, the party must show that the delay caused actual prejudice.³ As the divorce decree characterizes and divides certain assets and debts, allowing appellant to appeal from the decree at this time would necessarily result in prejudice to respondent with respect to these assets and debts. Thus, laches bars appellant from challenging the divorce decree. Additionally, we note that to the extent appellant seeks to challenge the child custody arrangement established in the divorce decree, that issue is moot because the custody arrangement has been modified by subsequent orders.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Leavitt, J.


Becker, J.

²Building & Constr. Trades v. Public Works, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992).

³State, Gaming Comm'n v. Rosenthal, 107 Nev. 772, 778, 819 P.2d 1296, 1301 (1991).

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Martin J. Murray
Emelita A. Murray
Clark County Clerk