

IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA J. SCHULTZ, N/K/A
RHONDA J. LUHMANN,
Appellant,
vs.
JON W. SCHULTZ,
Respondent.

No. 41690

FILED

JUL 11 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying an NRCP 60(b) motion to set aside a divorce decree. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Following a bench trial, Rhonda Luhmann and Jon Schultz were divorced on July 9, 2002, when the decree was filed, allegedly without Luhmann's knowledge. The district court had stated during the trial that both parties would have an opportunity to review the financial information which the court was awaiting in order to make its final property distribution determination. Two weeks after the bench trial, the district court, after reviewing the financial information, sent a letter asking respondent's counsel to draft the decree. The decree was drafted, signed and entered by the district court without being circulated to Luhmann. She perceived the divorce decree distribution as inequitable. Luhmann's counsel moved to set aside the decree on January 13, 2003, ten days after the six-month period in NRCP 60(b) for filing such a motion. The district court denied the motion and a subsequent motion for reconsideration. Luhmann appeals, arguing that the motion to set aside was timely filed and that the district court's ex parte letter to respondent's

counsel that instructed him to draft the final decree, constitutes an inappropriate communication.

Luhmann argues that the time for filing an NRCP 60(b) motion to set aside judgment begins to run upon the service of notice of entry of order. “Motions under Rule 60(b) are addressed to the sound discretion of the trial court”¹ Thus, the trial court’s determination “is not to be disturbed on appeal absent an abuse of discretion.”² In 2002, NRCP 60(b)(1) required that motions to set aside a judgment must be made “not more than six months after the judgment, order, or proceeding was entered or taken.” This version of the rule was in effect in 2002 when the district court issued the divorce decree and when the district court subsequently denied the request to set aside

It is clear from the 2002 text of the rule and the subsequent amendment that entry of an order triggered the six-month period for filing a motion to set the order aside under NRCP 60(b). Entry occurs when a signed copy of an order or judgment is filed with the clerk of court.³ Luhmann filed her NRCP 60(b) motion to set aside the decree on January 13, 2003, six months and ten days after the entry of the decree. As the motion was untimely filed, the district court did not abuse its discretion in denying it.


¹Heard v. Fisher’s & Cobb Sales, 88 Nev. 566, 568, 502 P.2d 104, 105 (1972).

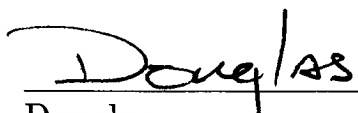
²Id.

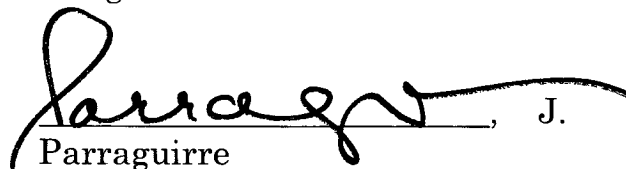
³Cf. NRAP 4(a)(3) “A judgment or order is entered within the meaning of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk.”

This conclusion forecloses any consideration of the ex parte and divorce decree merits issues, which were made known to Luhmann well before the expiration of the NRCP 60(b) deadline. Moreover, the merits of the divorce decree were not timely appealed. When a party seeks to appeal a judgment, notice of that appeal must be filed within thirty days of the date that written notice of the judgment's entry is served.⁴ Here, the decree was entered July 9, 2002, and the notice of entry was served on July 26, 2002. Luhmann failed to file notice of her appeal within thirty days of the notice of entry of order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Dani L. Stephens
Warhola & Brooks, LLP
Flangas Law Office
Nye County Clerk

⁴NRAP 4(a)(1); Whitman v. Whitman, 108 Nev. 949, 951-52, 840 P.2d 1232, 1233 (1992) (an untimely appeal divests this court of jurisdiction).