

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA,
Appellant,
vs.
MARK BURNSTEIN, ARBITRATOR;
GEORGE OEHLSEN, D.O.; AND
NEVADA SERVICE EMPLOYEES
UNION (SEIU) LOCAL 1107,
Respondents.

No. 42041

FILED

JAN 28 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition for a writ of mandamus or prohibition. Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Accordingly, we issued an order to show cause to appellant University Medical Center of Southern Nevada (UMC), granting it thirty days within which to demonstrate that jurisdiction in this court is proper. Having reviewed UMC's response, as well as the reply filed by respondents, we conclude that we lack jurisdiction over this appeal.

UMC filed a petition for a writ of mandamus or prohibition in the district court that challenged an arbitrator's decision to allow testimony regarding peer review into an arbitration hearing about a doctor's suspension. The district court denied UMC's petition for a writ of mandamus or prohibition in a written order on July 9, 2003. Respondents' counsel served notice of the order's entry by mail on July 11, 2003. Although a district court order denying a petition for a writ of mandamus or prohibition is considered a final judgment appealable under NRAP

3A(b)(1),¹ instead of appealing initially, UMC filed a petition for a writ of mandamus or prohibition in this court that challenged the district court's order. We denied the petition because writ relief is generally only warranted when there is no plain, speedy, and adequate remedy at law,² and the right to an appeal is considered an adequate remedy.³

On September 10, 2003, more than thirty-three days after written notice of the final judgment's entry,⁴ UMC filed its notice of appeal. The filing of a petition for a writ of mandamus or prohibition in this court does not toll the time for filing a notice of appeal.⁵ Thus, UMC's notice of appeal is untimely.

UMC contends that it made an inadvertent mistake by filing the petition for writ relief in this court instead of a notice of appeal. UMC argues that this court should excuse its mistake and review this appeal. In support, UMC cites Doolittle v. Doolittle,⁶ for the proposition that excusable neglect can be a basis for relief from the rules of this court.

Doolittle is distinguishable from the instant case. In Doolittle, the appellant timely filed a notice of appeal, but neglected to timely docket

¹See Ashokan v. State, Dep't of Ins., 109 Nev. 662, 665, 856 P.2d 244, 246 (1993).

²See NRS 34.170 (mandamus); NRS 34.330 (prohibition).

³See Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

⁴See NRAP 4(a)(1); NRAP 26(c).


⁵See NRAP 4(a)(2) (describing specific motions that toll the time for filing a notice of appeal).

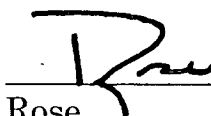
⁶70 Nev. 163, 262 P.2d 955 (1953).

or file the record on appeal. This court concluded that the appellant failed to show excusable neglect and dismissed the appeal.⁷ In accordance with Doolittle, under NRAP 3(a), “[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.” Unlike the failure to take steps beyond timely filing a notice of appeal, the proper and timely filing of a notice of appeal is jurisdictional.⁸ “Jurisdictional rules go to the very power of this court to act.”⁹ The failure to timely file a notice of appeal cannot be overlooked on the basis of excusable neglect.

Because UMC did not timely file its notice of appeal, this court is without jurisdiction to consider this appeal. Consequently, we

ORDER this appeal DISMISSED.


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Maupin

⁷Id. at 165-66, 262 P.2d at 956.

⁸Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

⁹Id. at 688, 747 P.2d at 1382.

cc: Hon. Stewart L. Bell, District Judge
Alverson Taylor Mortensen Nelson & Sanders
Kristina L. Hillman
Van Bourg, Weinberg, Roger & Rosenfeld
Mark Burnstein
Clark County Clerk