

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. SNOWDEN, D/B/A TALLY
HO; AND KING ARTHUR
ENTERPRISES, INC., D/B/A RICK'S
TALLY HO,
Appellants,
vs.
THERESA DAVIS; TRACY ROBERTS;
AND ELLISON LORES,
Respondents.

No. 42614

FILED

JUN 07 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER GRANTING MOTION TO DISMISS APPEAL

This is an appeal from a district court order granting a new trial. Respondents' negligence claims went to trial, and the jury returned a verdict for appellants. Subsequently, respondents filed a motion for a new trial, and the district court granted the motion in a November 25, 2003 written order. On November 26, 2003, respondents served notice of the order's entry on appellants. On December 12, 2003, appellants filed a motion asking the district court to clarify its order granting a new trial. Appellants' motion contended that the November 25, 2003 order was extremely vague and did not sufficiently explain the analysis and reasoning behind the court's decision. On December 31, 2003, the district court entered an amended order granting respondents' motion for a new trial. On January 12, 2004, appellants filed a notice of appeal.

Respondents have moved to dismiss this appeal, arguing that appellants' appeal is untimely. Specifically, respondents contend that appellants' time to appeal began to run on November 26, 2003, when notice of entry of the order granting a new trial was served, and the

January 12, 2004 notice of appeal was filed later than the thirty-day appeal period.¹

An appeal may be taken from an order granting a new trial.² NRAP 4(a) requires a party to file a notice of appeal no later than thirty days after written notice of an appealable order's entry is served. Here, after the jury returned a verdict for appellants, respondents moved for a new trial. The district court's November 25, 2003 order granted a new trial. Appellants' time to appeal from that order began to run on November 26, 2003, when respondents served written notice of the order's entry. Appellants' December 12, 2003 motion to clarify the district court's order did not affect the time for appealing from the new trial order.³ Thus appellants' notice of appeal is untimely.

Appellants contend, however, that the December 31, 2003 order was an amended order from which they could appeal. "[W]hether an appeal is properly taken from an amended judgment rather than the judgment originally entered depends upon whether the amendment disturbed or revised legal rights and obligations [that] the prior judgment had plainly and properly settled with finality."⁴ The November 25, 2003

¹Notably, appellants' December 12, 2003 motion recognized that their notice of appeal from the order granting a new trial was due on or before December 26, 2003.

²NRAP 3A(b)(2).

³See NRAP 4(a)(2) (setting forth specific motions that toll the time for filing a notice of appeal); see also Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (concluding that a motion for reconsideration does not toll the appeal period and no appeal lies from an order denying reconsideration).

⁴Morrell v. Edwards, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982).

order granting a new trial stated, in pertinent part: “[T]he motion is granted based on Judge Saitta’s order allowing Plaintiffs a rebuttable presumption that the area where the trailer was located was not secure.” Similarly, the December 31, 2003 amended order stated “this court failed to instruct the jury regarding the rebuttable presumption in favor of Plaintiffs as detailed in Judge Saitta’s earlier order and such failure resulted in prejudice to Plaintiffs because the burden of proof regarding the security of the area in question would shift to Defendant. Therefore, a new trial is ordered based upon the court’s failure to instruct the jury in this regard.” Although the second order is more clearly written and provides more detail, it does not appear to disturb or revise any legal rights and obligations decided by the original order. Respondents’ right to a new trial remains unchanged. Thus, it appears the second order is not an appealable amended order; an appeal would have properly been taken from the November 25, 2003 order. Accordingly, we grant respondents’ motion and dismiss this appeal.

It is so ORDERED.⁵

Becker _____, J.
Becker

Agosti _____, J.
Agosti

Gibbons _____, J.
Gibbons

⁵In light of this order, we deny appellants’ motion for a stay as moot.

cc: Hon. Jennifer Togliatti, District Judge
Thomas F. Kummer, Settlement Judge
Cohen, Johnson, Day, Jones & Royal
Benjamin B. Childs
Kenneth L. Hall
Clark County Clerk