

1
2
3
4 IN THE SUPREME COURT OF THE STATE OF NEVADA
5
6
7

8
9 ANTHONY JACOB MONAHAN,

10 Appellant,

Case No. 78489

11 Vs.

12
13 AMANDA KAITLYN HOGAN fka
14 AMANDA KAITLYN KING,

15 Respondent.
16 _____ /

FILED

JUL 29 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *D. Richards*
DEPUTY CLERK

17
18 RESPONSE TO MOTION TO DISMISS CASE
19
20
21
22

23 Aaron Bushur, Esq.
24 NV Bar No. 10862
25 316 California Ave., #256
26 Reno, Nevada 89509
27 (775) 229-4222
28 Aaronbushurlaw@yahoo.com
Attorney for Appellant

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4

5

7
8
9
10
11
12
13
14
15
16
17
18
19
20

22

23

25

26

27

28

1 **(b) Appealable Determinations.** An appeal may be
2 taken from the following judgments and orders of a district
3 court in a civil action:

4 (1) A final judgment entered in an action or proceeding
5 commenced in the court in which the judgment is rendered.

6 (2-6) (omitted)

7 (7) An order entered in a proceeding that did not arise
8 in a juvenile court that finally establishes or alters the custody
9 of minor children.

10 (8-10) (omitted)

11 Nevada Rule of Appellate Procedure 4 states in pertinent part as follows:

12 **RULE 4. APPEAL — WHEN TAKEN**

13 **(a) Appeals in Civil Cases.**

14 **(1) Time and Location for Filing a Notice of Appeal.**

15 In a civil case in which an appeal is permitted by law from a
16 district court, the notice of appeal required by Rule 3 shall be
17 filed with the district court clerk. Except as provided in Rule
18 4(a)(4), a notice of appeal must be filed after entry of a
19 written judgment or order, and no later than 30 days after the
20 date that written notice of entry of the judgment or order
21 appealed from is served. If an applicable statute provides that
22 a notice of appeal must be filed within a different time period,
23 the notice of appeal required by these Rules must be filed
24 within the time period established by the statute.

25 **(2) (omitted)**

26 **(3) Entry Defined.** A judgment or order is entered for
27 purposes of this Rule when it is signed by the judge or by the
28 clerk, as the case may be, and filed with the clerk. A notice
or stipulation of dismissal filed under NRCP 41(a)(1) has the
same effect as a judgment or order signed by the judge and
filed by the clerk and constitutes entry of a judgment or order
for purposes of this Rule. If that notice or stipulation
dismisses all unresolved claims pending in an action in the
district court, the notice or stipulation constitutes entry of a
final judgment or order for purposes of this Rule.

(4-7) (omitted)

(b-f) (omitted)

Zugel by Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296 (1983) states “Filing a timely notice of appeal is jurisdictional and an ultimately appeal may not be considered.” Citing Morrell v. Edwards, 98 Nev. 91, 640 P.2d 1322 (1982). The Court further stated “Under NRAP 4(a), the timely filing of notice of appeal begins to run upon service of written notice of entry of judgment.” *Id.*

In Healy v. Volkswagenwerk Aktiengesellschaft, 103 Nev. 329,331 741 P.2d 432, 433 (1987), the Supreme Court of Nevada stated NRAP 4(a) requires that notice of appeal in a civil case “shall be filed... within thirty (30) days of the date of service of written notice of entry of judgment or order appealed from.” In that case the Court found that Appellants filed their appeal seven (7) days beyond the time allowed and their untimely notice failed to evoke the Court’s jurisdiction for appeal. *Id.*

Argument

Appellant contends that he filed his Notice of Appeal within the thirty (30) days allowed pursuant to Nevada Rule of Appellant Procedure 4(a)(1) and within thirty (30) days of the March 1, 2019 Notice of Entry of Order. This rule states "...a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." In this case the District Court filed its Notice of Entry of Order on March 1, 2019 which Appellant argues serves no other purpose other than to notice the Parties

1 that a final order has been entered and which then causes the time for either Party to
2 file a timely appeal to run with the period concluding thirty (30) days later. Appellant
3 admits that the District Court's March 1, 2019 Order did not appear to fully resolve all
4 issues presented. Appellant admitted such in his March 29, 2019 Case Appeal
5 Statement although it remained unknown as to if the District Court would be
6 readdressing the issues at a later date or if the March 1, 2019 Order would stand. Based
7 upon the limited Order provisions found on page 9 of the District Court's March 1,
8 2019 Order, it is not clear as to if this was meant to be a final order or if additional
9 Orders and/or hearings would be held. Of most concern was the fact that the Court
10 filed its Notice of Entry of Order on March 1, 2019 in conjunction with the underlying
11 Order which was/is believed to be for the sole purpose of initiating the time allowed
12 for appeal of the Order. Appellant was forced to file his underlying appeal as a means
13 of securing his right to do so whether the March 1, 2019 Order was in fact a final or
14 intermediate order. Appellant continues to believe the Order is a final order as no
15 additional hearing has been scheduled on these issues and no movement towards a
16 custody schedule/exchange has been made.

17
18 The above provided case law supports Appellant's contention that appeal of the
19 District Court case is and was appropriate. In Zugel by Zugel v. Miller, 99 Nev. 100,
20 101, 659 P.2d 296 (1983) the Supreme Court of Nevada stated "Under NRAP 4(a), the
21 timely filing of notice of appeal begins to run upon service of written notice of entry of
22
23
24
25
26
27
28

1 judgment.” Id. As is argued elsewhere in this Response, the District Court entering its
2 Notice of Entry of Order gave Appellant notice that the Order had been entered and
3 serves no other reasonable purpose than to notice the Parties of entry and of their time
4 to appeal. Had the District Court not entered a Notice of Entry of Order perhaps there
5 is some room for argument that the March 1, 2019 Order was not intended to be or was
6 not a final order but when a District Court notices Parties that an order has been entered
7 for no other reasonable reason other than to have their appeal period to begin, Appellant
8 was correct to believe the March 1, 2019 Order to be a final order. As of the date of
9 this Response, it remains unknown as to if the March 1, 2019 Order was in fact a final
10 order for the purposes of appeal or if the Court will or intends to enter future orders
11 relating to these same issues.

12 In Healy v. Volkswagenwerk Aktiengesellschaft, 103 Nev. 329,331 741 P.2d
13 432, 433 (1987), stated NRAP 4(a) requires that notice of appeal in a civil case “shall
14 be filed... within thirty (30) days of the date of service of written notice of entry of
15 judgment or order appealed from.” As with the case law and argument in the previous
16 paragraph, Healy likewise supports Appellant’s contention, and possibly the District
17 Court’s contention that the March 1, 2019 Order was intended to be its final order for
18 appeal purposes. Healy also states that an appeal must be filed within thirty (30) days
19 of the date a notice of entry of order is served. Review of Healy indicates that the
20 simple filing of a notice of entry of order has the purpose of notifying litigants that the
21
22
23
24
25
26
27
28

1 thirty (30) day period in which to appeal has begun. No other reason exists for a court
2 filing such a notice.

3
4 Further, Nevada Rule of Appellate Procedure 3A, as is included above, supports
5 Appellant's March 29, 2019 Notice of Appeal. Nevada Rule of Appellant Procedure
6 3A(b)(7) states that appeals may be taken based upon District Court orders when "An
7 order entered in a proceeding that did not arise in a juvenile court that finally establishes
8 or alters the custody of minor children." The order in question in this case, the March
9 1, 2019 Order finally establishes and orders the custody of the Parties' minor child. In
10 that Order the Court effectively granted Respondent primary physical custody, found
11 that she did not need to seek permission to relocate although she did meet her burden
12 to relocate and ordered that the child would finish the school year at his current school.
13 The only unresolved issue was a visitation schedule which the Parties were directed to
14 meet and confer on. Based upon the wording of the District Court Order, if the Parties
15 were unable to do so a hearing could be held to determine that issue but the Order failed
16 to require any additional action by the Parties if they were in fact able to reach a
17 visitation agreement. These issues along with the above detailed fact that the Court
18 entered a Notice of Entry of Order leads Appellant to believe the March 1, 2019 Order
19 was in fact a "final order" for appellant purposes and his appeal of that order is and was
20 necessary to secure his appellant rights. Had Appellant not filed his current appeal it
21
22
23
24
25
26
27
28

1 could be argued that he waived his right to appeal any provisions and/or issues
2 contained within the March 1, 2019 Order.


3
4 Based upon the wording contained within the District Court's March 1, 2019
5 Order as well as the above law and argument, Appellant argues that the Order in
6 question is in fact a final order. In the event that Order is determined to not be a final
7 order and the appeal is therefore dismissed, Appellant suggests that Respondent's
8 request for attorney's fees and costs associated with the filing of her Motion to Dismiss
9 Appeal be denied as Appellant had reasonable belief that the Order in question was a
10 final order and therefore appealable based upon the imprecise language contained
11 within it as well as the associated actions taken in the District Court.
12
13
14

15 Additionally, undersigned counsel wishes to point out that pursuant to Nevada
16 Rule of Appellant Procedure 27(a)(3)(a), "Any party may file a response to a motion;
17 Rule 27(a)(2) governs its contents. The response must be filed within 7 days after
18 service of the motion unless the court shortens or extends the time." It should be noted
19 that Respondent's April 8, 2019 Motion to Dismiss states in its attached Certificate of
20 Service that undersigned counsel was served with a copy on April 8, 2019 through both
21 electronic mail and E-flex although undersigned counsel was not in fact served through
22 electronic mail until April 9, 2019. See Exhibit "1". Additionally, the file stamp states
23 the Motion was filed on April 9, 2019. Undersigned counsel likewise has not received
24 any notice through E-flex as of the date of this Response as it is believed undersigned
25
26
27
28

1 is not signed up to receive such notice. Appellant provided this information solely as
2 means of pointing out that this Response is timely filed pursuant to Nevada Rule of
3 Appellant Procedure 27(a)(2).
4

5 This document does not contain the Social Security Number of any person.

6 Dated this 26th day of July 2019.
7
8

9 
10 Aaron Bushur, Esq.
11 Bar No. 10862
12 316 California Ave., #256
13 Reno, Nevada 89509
14 775-219-4222
15 Attorney for Appellant Anthony Monahan
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font, Times New Roman style or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☒ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any

1 improper purpose. I further certify that this brief complies with all applicable Nevada
2 Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every
3 assertion in the brief regarding matters in the record to be supported by a reference to
4 the page and volume number, if any, of the transcript or appendix where the matter
5 relied on is to be found. I understand that I may be subject to sanctions in the event that
6 the accompanying brief is not in conformity with the requirements of the Nevada Rules
7 of Appellate Procedure.
8
9

10 Dated this 26th day of July 2019.
11
12

13
14 
15 Aaron Bushur, Esq.
16 NV Bar No. 10862
17 316 California Ave., #256
18 Reno, Nevada 89509
19 (775) 219-4222
20 Attorney for Appellant
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is AARON BUSHUR, ESQ, 316 California Ave., #256, Reno, Nevada 89509. On the 26th day of July 2019, I served the within document(s) through the U.S. Mail to:

Roderic A. Carucci, Esq.
Kelly A. VandeBurgt, Esq.
702 Plumas Street
Reno, Nevada 89509

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on the 26th day of July 2019 in Sparks, Nevada.



Signature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit “1”

Exhibit “1”

Monahan/Hogan

From: Bryttanie McNeff (bryt@nvlitigators.com)

To: aaronbushurlaw@yahoo.com

Cc: rod@nvlitigators.com; kelly@nvlitigators.com; clarissa@nvlitigators.com

Date: Tuesday, April 9, 2019, 04:37 PM PDT

Aaron, please see the attached motion to dismiss.

--

Bryttanie McNeff

Carucci & Associates

Attorneys at Law

702 Plumas Street

Reno, Nevada 89509

Phone: 775-323-0400 Fax: 775-323-0466

Toll Free: 844-79-NVLAW

Licensed in Nevada, Colorado, Oregon and Washington

Offices in Reno, Fernley, Fallon, Winnemucca



201904091626-2.pdf

76.6kB



201904091626-1.pdf

1MB



201904091626.pdf

1.8MB