

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER KHORSANDI, M.D.,
AN INDIVIDUAL; CHRISTOPHER
KHORSANDI, M.D., PLLC, A NEVADA
PROFESSIONAL LLC; AND
CATHERINE LE KHORSANDI, AN
INDIVIDUAL,
Appellants/Cross-Respondents,
vs.
SMITH PLASTIC SURGERY, INC., A
NEVADA CORPORATION; AND LANE
F. SMITH, M.D., AN INDIVIDUAL,
Respondents/Cross-Appellants.

No. 80957

FILED

APR 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DISMISSING CROSS-APPEAL
AND ALLOWING APPEAL TO PROCEED*

This is an appeal and cross-appeal from a district court order denying a special motion to dismiss under NRS 41.660. When our review of the docketing statements and other documents before this court revealed potential jurisdictional defects, we ordered the parties to show cause why the appeal and cross-appeal should not be dismissed for lack of jurisdiction. Specifically, it was unclear whether the appealed order actually denied the special motion to dismiss, and it appeared both that the cross-appeal was untimely and that cross-appellants were not aggrieved. The parties timely responded to our show cause orders.

Although interlocutory orders generally are not appealable, *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998), NRS 41.670(4) allows an appeal from a district

court order denying an NRS 41.660 special motion to dismiss. Cross-appellants argue, however, that the district court did not deny the special motion to dismiss but instead converted it into a motion for summary judgment, which it held in abeyance pending additional discovery. Appellants, on the other hand, assert that the special motion to dismiss was implicitly denied when the court determined that analysis of the first prong of the NRS 41.660(3) test, which looks to whether the action is based on good-faith communications, was impossible because they denied making the allegedly defamatory statements altogether; they contend that the court then moved on to consider their alternative motion to dismiss under NRCP 12(b)(5) and ordered additional discovery related to that part of their motion only.

“[W]hen unclear, a judgment’s interpretation is a question of law for this court.” *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570, 170 P.3d 989, 993 (2007). Here, although the district court did not expressly deny the special motion and ultimately declined to dismiss the case pending additional discovery, rendering the order unclear, we conclude that the order effectively denied appellants’ special motion to dismiss. Not only did the court conclude that the special motion to dismiss procedure did not apply under the circumstances of the case, where appellants could not show that the subject statements were made in good faith because they denied making the statements altogether, but also the court stated that even if appellants did make the statements, they were not cross-appellants’ patients and thus could not show that such statements were made in good faith. As the court determined that appellants could not succeed on their special motion to dismiss, we interpret the order as denying that motion

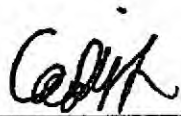
and converting the alternative motion to dismiss under NRCP 12(b)(5) into one for summary judgment. See NRCP 12(d) (providing for the court's conversion of an NRCP 12(b)(5) motion to dismiss into one for summary judgment when materials outside the pleadings are presented to the court); cf. NRS 41.660 (providing for an expedited ruling on a special motion to dismiss but no process whereby such a motion could be converted to one for summary judgment). Therefore, the district court's order is substantively appealable insofar as it denied appellants' special motion to dismiss.

With respect to the cross-appeal, it was concededly filed outside the NRAP 4(a) deadlines. While cross-appellants argue that their untimely notice of cross-appeal should be allowed to proceed due to excusable neglect, this court has consistently held that the time requirements for filing an appeal are mandatory and jurisdictional and that an untimely notice of appeal fails to vest jurisdiction in this court. See *Winston Prod. Co. v. DeBoer*, 122 Nev. 517, 519, 134 P.3d 726, 728 (2006); see generally *Seino v. Empls. Ins. Co. of Nev.*, 121 Nev. 146, 153, 111 P.3d 1107, 1112 (2005) ("This court . . . has never applied the doctrine of equitable tolling to statutory periods that are mandatory and jurisdictional."). Moreover, cross-appellants are not aggrieved by the district court's denial of appellants' special motion to dismiss, and to the extent they challenge the district court's decision to proceed with discovery, that portion of the order is not final and appealable. See NRAP 3A(a) (allowing an appeal by an aggrieved party); NRAP 3A(b) (listing appealable orders); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) ("A party is 'aggrieved' within the meaning of NRAP 3A(a) when either a personal right or right of property is adversely and substantially affected by a district

court's ruling."). Therefore, as the cross-appeal is untimely and cross-appellants are not aggrieved, we hereby dismiss the cross-appeal.

Briefing is reinstated as to the appeal. Appellants shall have 90 days from the date of this order within which to file and serve their opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. Eric Johnson, District Judge
Thomas J. Tanksley, Settlement Judge
Pisanelli Bice, PLLC
Sgro & Roger
Eighth District Court Clerk