

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY BYRD,

Appellant

– v –

CATERNIA ANGELA BYRD,

Respondent

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
District Court Case Number D-18-577701-Z

**RESPONDENT’S REPLY TO APPELLANTS RESPONSE TO THE
JUNE 29, 2020 ORDER TO SHOW CAUSE**

/s/ Jeanne F. Lambertsen

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8/3/20

Electronically Filed
Aug 03 2020 04:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GRADY BYRD,
Appellant,

VS.

**RESPONDENT'S REPLY TO APPELLANTS RESPONSE TO THE
JUNE 29, 2020 ORDER TO SHOW CAUSE**

DATED this 3rd^t day of August, 2020.

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**I.
INTRODUCTION**

This is a post-divorce matter. The Appellant, Grady Byrd (hereinafter "Grady"), is appealing two orders awarding the Respondent, Caterina Byrd (hereinafter "Caterina"), attorney fees. On or about June 29, 2020, this Court issued an Order to Show Cause why Grady's appeal should not be dismissed for lack of jurisdiction because his appeal is untimely. Caterina requests that his appeal be dismissed for lack of jurisdiction.

**II
PROCEDURAL BACKGROUND**

On October 21, 2019, an Evidentiary Hearing was held wherein, in addition to other relief, Caterina was awarded attorney's fees. Caterina was ordered to submit a Memorandum of Fees and Costs and Grady could file an objection. On November 25, 2019, Caterina submitted her Memorandum of Fees and Costs, Grady filed an Opposition, and Caterina filed a Reply. On March 17, 2020, a Judgment for attorney fees and costs in the amount of \$42,031.75 was entered and served. Grady's counsel opened this order on March 18, 2020.¹ The Notice of Entry of Order of this Judgment for attorney fees was entered and served on March 18, 2020. Grady's counsel did not open this order.²

On March 27, 2020, the district court order awarding Caterina attorney fees was entered and served. These fees arose out of Grady's announcement that he was

¹Odyssey File & Serve Envelope Receipt 03/17/2020

²Odyssey File & Serve Envelope Receipt 03/18/2020

1 appealing the district court's order from the October 21, 2019 Evidentiary Hearing.
2 Caterina filed her Motion for fees for the appeal on December 16, 2019, Grady
3 opposed her motion and Caterina filed her reply. At the hearing on February 27,
4 2020, on Caterina's Motion, she was awarded attorney fees for Grady's appeal. An
5 order for attorney fees in the amount of \$20,000.00 was entered and served on March
6 27, 2020. Grady's counsel viewed this order on March 30, 2020.³

7 On May 14, 2020, Grady filed his notice of appeal of the March 17, 2020
8 Judgment for attorney fees and the March 26, 2020 orders. He noted the Notice of
9 Entry of said orders was made on March 18, 2020, and March 27, 2020, respectively.

10 On June 18, 2020, Grady filed his Docketing Statement. He failed to list the
11 date of entry for both orders that he is appealing and he claimed that the rule
12 governing the time limit for filing of his notice of appeal was NRAP 4(a) and 2020-
13 04-01 Declaration of Emergency Directive 009 (Revised).⁴

14 On June 29, 2020, this Court issued an Order to Show Cause. Grady must
15 demonstrate why this appeal should not be dismissed for lack of jurisdiction for an
16 untimely appeal. The notices of appeal had to be filed by April 17, 2020, and April
17 27, 2020, respectively, which he failed to do. Governor Sisolak's Declaration does
18 not apply to court rules and Grady failed to comply with NRAP 4(a)(1).

19 **III.**

20 **ARGUMENT**

21 Grady failed to demonstrate why this appeal should not be dismissed for lack

22 ³Odyssey File & Serve Envelope Receipt dated 03/27/20
23

⁴See Appellant's Docketing Statement filed 06/18/20, sections 16, 17 and 20

1 of jurisdiction due to his untimely appeal. Grady cites no case law, no statute nor
2 court rule or other authority showing that this Court has jurisdiction. Grady admits
3 that he “failed to correctly calendar a response date.”⁵ He makes dramatic,
4 unsupported claims of a pandemic eruption, closing down of businesses and a
5 shutdown. He offers no supporting evidence that the electronic filing system ceased
6 to work or that he was otherwise barred from filing his notice of appeal. There was
7 no surprise or lack of clarity. Grady was actively participating in the ongoing
8 litigation in this case, including filing his opposition to Caterina’s Memorandum of
9 Fees and Costs, filing his opposition to Caterina’s Motion for attorney fees for the
10 appeal and receiving and viewing the March 17, 2020 and March 27, 2020 orders for
11 attorney fees that Caterina properly served pursuant to NEFCR Rule 9. Grady even
12 filed a request for the transcript of proceedings on April 14, 2020, in Supreme Court
13 Case No. 80548 involving these parties. If he was performing all this filing, he could
14 have filed the notice of appeal in a timely manner. Further, Grady’s illustration that
15 the Eighth Judicial District Court’s Administrative Order 20-17 filed on June 1,
16 2020, that the district court would consider a “timely motion to be filed to extend
17 service of process” is irrelevant. There is nothing remotely similar to the extension
18 of time for service of process in district court and the filing of a timely notice of
19 appeal with the Nevada Supreme Court. Additionally, to receive an extension of time
20 for service of process in district court, the party had to file a motion. The extension
21 of time is not automatic. The party also had to describe “properly documented service
22 issues.” Grady had no documented service issues in this matter. Also, this

⁵Appellant’s Response to Order to Show Cause, filed 07/22/20 page 4, ln. 4

Administrative Order was not published by the district court until June 1, 2020, so Grady could not have relied on it when he filed his untimely notice of appeal on May 14, 2020. Grady finally admits that he “failed to correctly calendar a response date.”⁶ Accordingly, his appeal is untimely and must be dismissed for lack of jurisdiction.

1. Governor’s Directive Did Not Alter the Time to File an Appeal

The Nevada State Supreme Court in Administrative Order 0013 filed on April 10, 2020 stated in pertinent part that:

Article 3, section 1 of the Nevada Constitution provides that, “The powers of the Government of the State of Nevada shall be divided into three separate departments, the Legislative, the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.”

The Governor’s Directive signed April 1, 2020 stated in pertinent part that:

Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date of the state of emergency declared on March 12, 2020 is terminated.

Nowhere in this Directive is there any mention of court rules; no mention of NRAP, Supreme Court Rules, NRPC, NRCP, Short Trial, Guardianship, ADR, NEFCR, the Local Rules of Practice or any of the other court rules of Nevada. Further, this Court’s Administrative order highlighted the separation of powers between the branches of government, which fortifies the fact that the court rules remained unchanged. Thus, the NRAP 4(a)(1) deadline to file an appeal remains in

⁶Appellant’s Response to Order to Show Cause, filed 07/22/20 page 4, ln. 4

1 full force and effect.

2 Grady wrongfully argues that “suspension of timelines was implemented
3 uniformly across the entire Eighth Judicial District” ⁷ There was no suspension of
4 jurisdiction requirements. For example, the Eighth Judicial District Court
5 Administrative Order 20-09 filed on March 20, 2020, states that:

6 “Attorneys and litigants should be aware that the district court is unable to
7 waive jurisdictional requirements.....” ⁸.

8 While this notice was provided in the section involving statutes of limitation relating
9 to medical malpractice cases, it nonetheless gives counsel valuable information
10 regarding the continuance of jurisdictional requirements in cases.

11 **2. Grady’s Appeal Must Be Dismissed for Lack of Jurisdiction**

12 NRAP 4(a)(1) states in pertinent part:

13 a notice of appeal must be filed after entry of a written
14 judgment or order, and no later than 30 days after the date
15 that written notice of entry of the judgment or order
16 appealed from is served.

17 Grady’s notice of appeal was not filed until May 14, 2020. His notice fails to
18 comply with NRAP 4(a)(1) as it was filed much later than 30 days after the date of
19 the written notice of entry of the judgment or order:

| Description of Order | Date Filed & Served | Deadline For Notice | Days from Order |
|-----------------------------|------------------------|------------------------|--------------------|
| Judgment for Attorney fees | 03/18/20 | 04/17/20 | 57 |
| Order from 02/27/20 Hearing | 03/27/20 | 04/27/20 | 48 |

22
23 ⁷Appellants Response to OSC, filed 07/22/20, pg. 4, ln 15.

⁸EJDC Admin Order 20-09 filed March 20, 2020, pg. 2, ln. 8.

1 Grady's appeal must be dismissed for lack of jurisdiction. Winston Products
2 Co. v. DeBoer, 122 Nev. 517,519, 134 P.3d 726, 728(2006)(this Court lacks
3 jurisdiction over an untimely appeal).

4 **IV.**

5 **CONCLUSION**

6 This Court does not have jurisdiction to consider Grady Byrd's appeal of the
7 district court's orders awarding Caterina Byrd attorney fees on March 18, 2020, and
8 on March 27, 2020, and as such, this appeal must be dismissed for lack of
9 jurisdiction.

10 DATED this 3rd day of August, 2020.

11 */s/ Jeanne F. Lambertsen*

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