

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY NOLAN,

Appellant,

vs.

STEVEN WOLFSON; MARY K.
HOLTHUS; JAMES R. SWEETIN;
SARAH OVERLY; CLARK COUNTY
DISTRICT ATTORNEYS OFFICE;
FRANK R. LOGRIPPO; STEFANY
MILEY; AND KATLYN BRADY,
Respondents.

No. 83616

FILED

NOV 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF LIMITED REMAND

This is a pro se appeal from an August 11, 2021, district court order dismissing appellant's complaint, denying a motion to appoint counsel, and denying a motion for reconsideration.¹ A notice of appeal must generally be filed in the district court within 33 days of service of notice of entry of the order challenged on appeal. See NRAP 4(a)(1); NRCP 6(d); NRAP 26(c). Here, the certificate of service attached to the notice of entry of the August 11, 2021, order states that the notice of entry was served on

¹Appellant also identifies a minute order dismissing his complaint in his notices of appeal, but such a minute order is not appealable. See *State, Div. of Child and Family Serv's v. Eighth Judicial Dist. Court*, 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) ("[D]ispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective.").

Review of the notices of appeal indicates that two respondents were inadvertently omitted from the caption upon docketing. Accordingly, the clerk shall modify the caption of this appeal consistent with the caption on this order. Should any party object to the modification, they shall so notify this court, in writing, within 7 days of the date of this order.

appellant by mail on August 19, 2021. Each of appellant's four notices of appeal were untimely filed in the district court more than 33 days later. Apparently recognizing that the notices of appeal were untimely filed, appellant asserts in his notices of appeal and his docketing statement that the district court clerk did not timely serve him with notice of the minute order and seems to assert that he never received notice of the written order. Appellant further indicates that he did not receive notice of the district court's oral decision until September 22, 2021. Appellant has also filed an unopposed motion for clarification in which he asks that this court "apply the appeal filed on 10/13/2021 to cover the final judgment on 8/19/21." In support, appellant again asserts that the clerk's office did not timely notify him of the minute order denying his complaint and has not served him with the written order.

Service by mail is complete upon mailing. *See* NRCP 5(b)(2); NRAP 25(c)(3). However, when the "appellant avers that he did not receive the notice of entry of judgment, there is a legitimate question of fact as to whether the notice was ever mailed." *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983). Appellant's assertions regarding his receipt of notice of the district court's decision appear to raise a genuine issue of fact as to whether the notice of entry of the August 11, 2021, order was actually mailed to appellant on August 19, 2021. This court is not a fact-finding tribunal. *Id.* Accordingly, this court remands this matter to the district court to determine whether respondents mailed the notice of entry of order to appellant on August 19, 2021, as indicated in the certificate of service. *See* NRCP 58(e) (providing that notice of entry of order must be served by a party in cases that do not involve family law). Because respondents are in a much better position to prevent questions regarding when the notice of

entry of order was served, respondents shall have the burden of proving that the notice of entry of order was served on appellant by mail on August 19, 2021. *See id.* at 101 n.1, 659 P.2d at 297 n.1. The district court shall have 60 days from the date of this order to certify and transmit its findings to the clerk of this court. The deadlines to file documents in this matter are suspended pending further order of this court.

It is so ORDERED.

1. J. J. J., C.J.

cc: Hon. Jessica K. Peterson, District Judge
Ricky Nolan
Christopher M. Guy/Office of the Attorney General
Clark County District Attorney/Civil Division
Eighth District Court Clerk