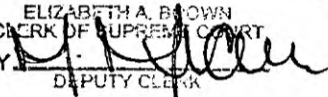


IN THE SUPREME COURT OF THE STATE OF NEVADA

LUKE HATCH,
Appellant,
vs.
KAYCE HATCH,
Respondent.

No. 87169
FILED

MAR 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART AND REINSTATING
BRIEFING*

This is an appeal from a June 21, 2023, district court order granting a motion to set aside a divorce decree and/or for a new trial, setting child support and alimony retroactively, and awarding attorney fees and costs in an amount to be determined (June 21 Order), and from a July 25, 2023, district court order awarding attorney fees and costs in an amount certain (July 25 Order). Seventh Judicial District Court, Lincoln County; Gary Fairman, Judge.

When initial review of the docketing statement and documents before this court revealed a potential jurisdictional defect, this court ordered appellant to show cause why this appeal should not be dismissed, in part, for lack of jurisdiction. Specifically, it appeared the notice of appeal from the June 21 Order was untimely filed, as it was filed well after expiration of the 30-day appeal period. *See* NRAP 4(a)(1).

Having considered appellant's response, appellant has failed to demonstrate that this court has jurisdiction over the portion of the appeal

challenging the June 21 Order.¹ See *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) (“[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.”). Appellant asserts that the motion to set aside the divorce decree and/or for a new trial and setting child support and alimony retroactively was one of the motions enumerated in NRAP 4(a)(4) (a motion under NRCP 59 for a new trial or to alter or amend the judgment), which meant that “the time to file a notice of appeal runs for all parties from the entry of an order disposing of the last remaining motion.” NRAP 4(a)(4). He asserts that the order disposing of the last remaining issue in the motion was the July 25 Order, not the June 21 Order, because “[p]art and parcel of Plaintiff’s Motion for A New Trial was a request for attorney’s fees.” This court is not persuaded by this argument.


Although the June 21 Order did not finally resolve the amount of the attorney fees and costs to be awarded, it finally modified the legal rights and obligations of the parties with regard to the child support and alimony ordered in the final judgment (the divorce decree). Therefore, the June 21 Order was independently appealable, even without an award of attorney fees and costs. See *Morrell v. Edwards*, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982); *Gumm v. Mainor*, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002). The time to file a notice of appeal from the June 21 Order ran from the date of service of notice of entry of that order on June 29, 2023, see NRAP

¹The order to show cause also explained that it did not appear appellant was aggrieved by the portions of the June 21 Order retroactively modifying child support because appellant agreed to the modification and the amount of arrearages payments. Appellant does not dispute this in his response to the order to show cause.

4(a)(1), (5), making appellant's notice of appeal filed in the district court on August 15, 2023, untimely as to that order. This court lacks jurisdiction to consider an untimely notice of appeal. *Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987).

Accordingly, this court dismisses the appeal of the June 21 Order for lack of jurisdiction. This appeal may proceed with respect to the July 25 Order. Appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). Failure to timely file and serve the opening brief and appendix may result in the imposition of sanctions, including dismissal of this appeal. NRAP 31(d)(1).

It is so ORDERED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Gary Fairman, District Judge
Carolyn Worrell, Settlement Judge
Justice Law Center
Mills & Anderson Law Group
Lincoln County Clerk