

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAD WILLIAM OXBORROW,
Appellant,
vs.
STATE OF NEVADA DIVISION OF
WELFARE AND SUPPORTIVE
SERVICES; KATRINA LOUISE
BARKDULL, A/K/A KATRINA LOUISE
OXBORROW,
Respondents.

No. 87178

FILED

DEC 01 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a July 13, 2023, order modifying child support. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Initial review of the notice of appeal and documents before this court indicated that the notice of appeal may have been untimely filed. In particular, the certificate of service attached to the notice of entry of the challenged order indicates that notice of entry of order was served on appellant, via mail, on July 17, 2023. The notice of appeal was filed in the district court on August 23, 2023, outside of the 30-day appeal period established by NRAP 4(a)(1). *See also* NRCP 6(d) and NRAP 26(c) (adding 3 additional days to a period of time when a party is required to act within a prescribed period of time after being served by mail). In the notice of appeal, appellant stated that notice of entry of the order was never served and he did not receive the order until contacting the district court clerk on August 17, 2023.

Service by mail is complete upon mailing. *See* NRCPC 5(b)(2)(C); NRAP 25(c)(3). However, when an “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). Because appellant’s assertions regarding his receipt of the district court’s order appeared to raise a genuine issue of fact as to whether notice of entry of the challenged order was actually mailed to appellant, this court remanded this matter to the district court for the limited purpose of determining whether the notice of entry was mailed to appellant on July 17, 2023, as indicated in the certificate of service. *See id.*

The district court has transmitted its order to this court and has concluded that written notice of entry of the order appealed from was mailed to appellant on July 17, 2023. This court has steadfastly recognized that the appeal period under NRAP 4(a)(1) starts from the date notice of entry of order is served; the date appellant received the order is irrelevant. *See, e.g., Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987); *Walker v. Scully*, 99 Nev. 45, 46, 657 P.2d 94, 94-95(1983); *Zugel*, 99 Nev. at 101, 659 P.2d at 297 (considering a claim that appellant did not timely receive the notice of entry of judgment and remanding to the district court for a factual finding as to whether notice was actually mailed, not whether notice was actually received). Therefore, the notice of appeal was untimely filed.

Appellant has filed a motion requesting that this court accept his untimely-filed notice of appeal due to the length of time it takes to send documents through the mail. However, this court lacks jurisdiction over an untimely notice of appeal, *see Healy*, 103 Nev. at 331, 741 P.2d at 433, and is unable to extend the time to file the notice of appeal, *see* NRAP 26(b)(1)(A)

(providing that the court may not “extend the time to file a notice of appeal except as provided in Rule 4(c)”). Accordingly, the motion is denied and this court

ORDERS this appeal DISMISSED.¹


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Gary Fairman, District Judge
Chad William Oxborrow
Attorney General/Carson City
Attorney General/Reno
Volunteer Attorneys for Rural Nevadans
White Pine County Clerk

¹Respondent Katrina Louise Barkdull’s motion to dismiss this appeal is denied as moot.