

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELISSA RIVERA, A/K/A MELISSA
RODRIGUEZ, AN INDIVIDUAL,
Appellants,
vs.
ASHLEY BIRK, AN INDIVIDUAL,
Respondent.

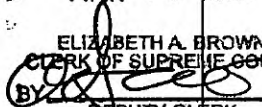
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No. 87072

FILED

MAR 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 87462

✓ No. 88155

*ORDER DISMISSING APPEAL, CONSOLIDATING REMAINING
APPEALS, AND REINSTATING BRIEFING*

Docket No. 87072 is an appeal from a district court judgment pursuant to a jury verdict in a personal injury action. Docket No. 87462 is an appeal from a post-judgment order awarding attorney fees and costs, and Docket No. 88155 is an amended appeal from a second post-judgment order awarding attorney fees and costs. Currently before this court are jurisdictional concerns in all three appeals and a motion to consolidate.

The underlying proceedings arose from a motor vehicle collision. A jury trial was held, and a judgment on the verdict was entered on June 23, 2023, with notice of the judgment's entry served on June 26. A

few days later, respondent filed a motion for attorney fees and costs, which appellant moved to retax. On July 24, 2023, respondent filed a motion for additur or, in the alternative, for a new trial as to damages, which tolled the period to appeal from the judgment. NRAP 4(a)(4). Nevertheless, appellant filed a notice of appeal two days later, and that appeal from the judgment was docketed under No. 87072.

After hearing argument on the post-judgment motions, the district court entered an order on September 19, indicating that it had previously denied the motion for additur or a new trial, granting in part the motion to award attorney fees and costs, and denying the motion to retax costs. Although the order's language regarding the motion for additur or a new trial is not entirely clear, no other order was entered denying the tolling motion, and we thus construe the September 19 order as resolving that motion and perfecting the appeal from the June 23 judgment under NRAP 4(a)(6) (explaining that a premature notice of appeal filed before a timely tolling motion is resolved will be deemed filed on the same date and after entry of an order resolving the tolling motion).

On October 12, 2023, appellant filed a notice of appeal from the September 19 post-judgment order, which was assigned to Docket No. 87462. Four days later, on October 16, respondent filed a motion to amend the June 23 judgment and the September 19 post-judgment order as to the award of attorney fees, due to a calculation error in assessing prejudgment interest. Although the motion to amend was not timely insofar as it sought to amend the judgment and thus did not again toll the period to appeal from the judgment, it arguably did toll the time to appeal from the post-judgment attorney fees and costs order.

On November 2, 2023, however, the district court sua sponte struck the September 19 order due to perceived errors. As a result, this court issued orders to show cause in both Docket No. 87072 and Docket No. 87462, as it was unclear whether the July 24 tolling motion thus remained pending and whether any attorney fees and costs order existed from which to appeal. In response, appellant provided this court with a copy of a new district court order resolving the July 24 tolling motion, awarding attorney fees and costs, and resolving the motion to retax costs; this replacement order was dated November 13.¹ Additionally, appellant provided a copy of a November 21 order granting respondent's motion to amend; although the November 21 order granted the motion to amend both the judgment and the separate attorney fees award, the court contemplated further action to finalize these adjusted amounts, as it expressly ordered respondent to submit a judgment on the jury verdict to the court for signature. A second show cause order was entered in Docket No. 87462, as no notice of appeal was filed from the court's November orders. And at this court's request, on February 26, 2024, the district court clerk transmitted to this court the district court's signed November 27 amended judgment incorporating the adjusted judgment and attorney fees amounts, and it was entered on the docket in these cases.

Meanwhile, after the multiple show cause orders were issued, appellant on February 16, 2024, filed a late amended notice of appeal from the September 19 stricken order and the November 13 replacement order

¹Although the district court served notice of entry of the November 13 order the next day, that notice of entry did not serve to commence the appeal period because it was not served by a party to the action. NRAP 58(e); see *In re Duong*, 118 Nev. 920, 922-23, 59 P.3d 1210, 1211-12 (2002).

awarding attorney fees and costs. No amended notice of appeal from the November 27 amended judgment has been filed, and at no point in the post-judgment proceedings did the parties and the district court proceed under the limited remand processes of NRCP 62.1 and NRAP 12A, despite notices of appeal having been filed. *See also* NRCP 60(a) (“[A]fter an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court’s leave.”). As the filing of a notice of appeal generally divests the district court of jurisdiction over the orders appealed from, *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987), these procedural derelictions have resulted in quagmire of jurisdictional confusion.

Jurisdiction over the appeal in Docket No. 87072

Although this court reinstated briefing in Docket No. 87072 on December 18, the subsequent discovery of the November 27 amended judgment has raised additional jurisdictional concerns. Namely, it appears that the district court lacked jurisdiction to amend the judgment, as appellant’s notice of appeal was perfected on September 19, when the first tolling motion was denied, or at least on November 13, when the court again denied the tolling motion in the replacement order. Moreover, no amended notice of appeal was filed from the amended judgment. *See generally* NRAP 4(a)(5) (explaining that an appeal from a “judgment substantively altered or amended upon the granting of a motion listed in Rule 4(a)(4)” is taken by filing an amended notice of appeal).

Nevertheless, appellant timely appealed from the original judgment, and it is clear from her responses to our orders to show cause that she has not abandoned that appeal in light of the amended judgment. It is further clear that the district court intended to correct, as unopposed,

a miscalculation of prejudgment interest, although it was mistaken in its conclusion that it had jurisdiction to do so. As appellant urges in her response, there is little need to complicate this matter further by striking the amended judgment and remanding for the court to reenter it; accordingly, we treat the matter as if the district court had certified its intent to amend the judgment under NRAP 12A and the parties had sought and obtained a remand for that purpose. We deem the November 27 amended judgment properly entered and appealed from, NRAP 4(a)(6), and the appeal in Docket No. 87072 may proceed. *See generally Shotwell v. Filip*, 722 S.E.2d 906, 909 (Ga. App. 2012) (“Although the trial court entered the amended order after the notices of appeal were filed in these companion cases, this court will not require a vain action by reversing the original order and remanding for re-entry of the amended order where full compliance with the purpose [of Georgia’s rule on entering findings of fact and conclusions of law] has been achieved.” (internal quotation marks and ellipses omitted)).

Jurisdiction over the appeal in Docket No. 87462

As noted, the October 16 motion to amend sought to amend both the judgment and the September 19 attorney fees award; because it was timely filed within 28 days from service of the attorney fees award’s notice of entry, NRCP 59(e), the district court retained jurisdiction to consider it insofar as it sought to amend the award. NRAP 4(a)(6). For this reason, we conclude that, even though a notice of appeal had been filed, the district court retained jurisdiction to sua sponte amend the September 19 order. Moreover, as the district court ostensibly treated the motion to amend the September 19 order as likewise seeking to amend the November 13 replacement order, which was substantively equivalent, we do the same.

That tolling motion ultimately was resolved by the November 27 judgment, and therefore, the notice of appeal in Docket No. 87462 is deemed timely filed upon and after that judgment's entry, NRAP 4(a)(6), and that appeal also may proceed.

Jurisdiction over the appeal in Docket No. 88155

The February 16 amended notice of appeal, docketed in No. 88155, was not timely filed as to the November 27 judgment amending the judgment and attorney fees amounts, notice of entry of which was served electronically the same day. NRAP 4(a)(5). Accordingly, we lack jurisdiction and order that appeal dismissed.

Motion to consolidate and briefing schedule

We conclude that the appeals in Docket Nos. 87072 and 87462 may proceed. The motion to consolidate those appeals is granted, NRAP 3(b)(2), and the appeals are hereby consolidated for all appellate purposes. Appellant shall have 60 days from the date of this order to file and serve a single opening brief raising all issues in these consolidated appeals, and an appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Danielle K. Pieper, District Judge
John Walter Boyer, Settlement Judge
Messner Reeves LLP
Aaron Law Group, LLC
Bighorn Law/Las Vegas
Eighth District Court Clerk