

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER W. HOLCOMBE,
Appellant,
vs.
WFS FINANCIAL, INC., A
CALIFORNIA CORPORATION, F/K/A
WESTERN FINANCIAL SAVINGS
BANK, F.S.B.,
Respondent.

No. 38661

FILED

DEC 18 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ROGER W. HOLCOMBE,
Appellant,
vs.
WFS FINANCIAL, INC., A
CALIFORNIA CORPORATION, F/K/A
WESTERN FINANCIAL SAVINGS
BANK, F.S.B.,
Respondent.

No. 39136

ORDER DISMISSING APPEAL IN DOCKET NO. 38661
AND ORDER OF AFFIRMANCE IN DOCKET NO. 39136

These are consolidated appeals from a judgment in a breach of contract action.¹ First, we conclude that we lack jurisdiction over the appeal in Docket No. 38661. On September 20, 2001, the district court entered an order granting summary judgment in favor of respondent for deficiency due under an automobile sales contract in the amount of \$3,169.25. On September 24, 2001, appellant filed a motion for a hearing to determine the reasonable value of the automobile and the amount owed to respondent. The district court construed appellant's motion as a motion

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in these appeals.

to amend the judgment under NRCP 59(e). On October 22, 2001, appellant filed a notice of appeal from the September 20, 2001 order (Docket No. 38661). A timely motion under NRCP 59(e) terminates the time for filing a notice of appeal from the judgment.² A notice of appeal filed before formal resolution of an NRCP 59(e) motion has no effect, and fails to vest jurisdiction in this court.³ Accordingly, we dismiss the appeal in Docket No. 38661 for lack of jurisdiction.

On December 11, 2001, the district court entered an order that resolved appellant's NRCP 59(e) motion by determining that appellant owed the deficiency amount previously ordered. The court also awarded \$3,975 in attorney fees to respondent. On December 20, 2001, appellant filed a notice of appeal (Docket No. 39136). As appellant filed a timely notice of appeal in Docket No. 39136, we have jurisdiction to consider the summary judgment as well as the post-judgment order of the district court.

Summary judgment is appropriate when, viewing the record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁴ This court reviews an order granting summary judgment de novo.⁵

²NRAP 4(a)(2).

³Id.

⁴NRCP 56(c); Great American Ins. v. General Builders, 113 Nev. 346, 350-51, 934 P.2d 257, 260 (1997).

⁵Schroeder v. Ely City Mun. Water Dep't, 112 Nev. 73, 910 P.2d 260 (1996).

Appellant contends that the district court erroneously granted summary judgment in favor of respondent because there was a genuine issue of fact concerning whether the parties agreed that appellant's overpayments would be applied to reduce the principal under the contract.

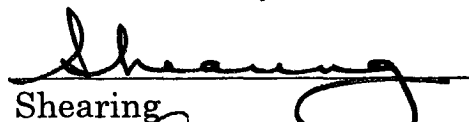
We conclude that the district court did not err. The district court found that the contract required appellant to tender timely payments of \$475.56 each month. Appellant did not provide evidence demonstrating that he made each payment required under the contract. According to appellant's own accounting, he did not make the \$475.56 payment for the months of June, July, October, and December of 1999, and his total amount of payments in 1999 was less than the total amount owed for the year. Additionally, the district court found that the contract provided: "early payments will have the effect of reducing your final payment." Because appellant did not provide this court with a copy of the contract, this court must accept as true the district court's findings concerning the contract's provisions. It is the appellant's responsibility to provide this court with an adequate appellate record, and "[w]hen evidence upon which the lower court's judgment rests is not included in the record, it is assumed that the record supports the district court's decision."⁶


⁶M & R Investment Co. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987); see also Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981).

Appellant also contends that the contract was modified by a unilateral memo he attached to his first payment indicating that overpayments would apply to the principal. Because appellant has failed to support this argument with any legal authority, we need not consider it. See SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984).

Appellant also contends that there was an issue of fact as to the vehicle's value. However, the district court directed the parties to provide additional evidence on the valuation. Respondent provided additional documentation concerning the vehicle's value, but appellant did not file any opposition or provide any evidence as to the value in response. The district court determined that the amount received from the vehicle's sale at auction represented the fair market value. We conclude that the district court did not err. Accordingly, we affirm the judgment of the district court.

It is so ORDERED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Michael P. Gibbons, District Judge
Jeffrey A. Dickerson
Robert C. Herman
Douglas County Clerk