

SUPREME COURT OF NEVADA

In re Lenk Family Trust

No. 85457 · No. No. 85457 · Decided November 4, 2022

SUMMARY

The Supreme Court of Nevada dismissed a pro se appeal from several probate-case orders because the notice of appeal was filed more than 30 days after service of notice of entry of each order. The court held that the cited probate and trust orders were appealable under NRS 155.190 and that an untimely appeal could not be rescued by an allegedly void order or an untimely NRCP 60(b) motion. The appellants' emergency motion for a stay was denied as moot.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty; Stiglich; Herndon
JURISDICTION	Nevada
DECIDED	November 4, 2022
DOCKET	No. 85457
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se appeal from probate-related district court orders; respondents countermove to dismiss for lack of appellate jurisdiction based on an untimely notice of appeal.
STANDARD OF REVIEW	Not expressly stated; appellate jurisdiction and timeliness were determined under the governing statutes and appellate rules.
PRECEDENTIAL VALUE	Published Nevada Supreme Court order; precedential status is not expressly described in the opinion text.
PARTIES	Robert R. Pilkington, Denise L. Pilkington v. The Lenk Family Trust, Hunter Liggett, Jill Rene Stynda, Janet E. Lenk Cohen, Carin Lenk Sloan, Kristin Noel Lenk Pfeifer, Ginger Stumne, Nye County Public Administrator

TOPICS

- probate procedure
- appellate jurisdiction
- appellate procedure
- trust administration
- civil procedure

PRACTICE AREAS

probate

trusts

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the appeal was timely under NRS 155.190, NRS 164.033, NRAP 3A, and NRAP 4.
2. Whether an untimely NRCP 60(b) motion or allegations that the appealed orders were void could preserve or toll the time to appeal.
3. Whether the Supreme Court could grant appellants' emergency motion for a stay.

HOLDINGS

1. The appeal was untimely because the notice of appeal was filed more than 30 days after service of notice of entry of each appealed order.
2. The NRCP 60(b) motion did not toll the appeal period because it was filed outside the timeframe for tolling motions.
3. Allegations that an order is void do not waive the jurisdictional deadline for filing a notice of appeal.
4. The emergency motion for stay was denied as moot because the appeal was dismissed.

KEY QUOTATIONS

“The notice of appeal was filed more than 30 days after notice of entry of each appealed order and is thus untimely.” (3)

“Accordingly, as we lack jurisdiction, we grant the countermotion and ORDER this appeal DISMISSED.” (4)

FACTUAL BACKGROUND

The appealed orders directed the public administrator or trustee to take actions concerning estate and trust property and directed Robert Pilkington to return such property. A later order confirmed a settlement acknowledging that certain trusts and a pour-over will were invalid, restricted appellants' authority to transfer estate or trust assets, directed transfer of those assets to the estate, and closed the case upon transfer. Notice of entry of the orders was served in August 2021, September 2021, and August 2022, but the notice of appeal was not filed until September 30, 2022.

PROCEDURAL HISTORY

The Fifth Judicial District Court, Nye County, entered orders in August 2021, September 2021, and August 2022 concerning estate and trust property, invalid trusts and a pour-over will, a settlement, and closure of the case. Notice of entry of each order was served more than 30 days before appellants filed their September 30, 2022 notice of appeal. The Nevada Supreme Court granted respondents' countermotion and dismissed the appeal for lack of jurisdiction; it denied the emergency motion for stay as moot.

DISPOSITION

dismissed

CASES CITED

- In re Estate of Herrmann, 100 Nev. 1, 21, 677 P.2d 594, 607 (1984)
- Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983)
- State ex rel. Smith v. Sixth Judicial District Court, 63 Nev. 249, 256, 167 P.2d 648, 651 (1946)
- Poirier v. Board of Dental Examiners, 81 Nev. 384, 404 P.2d 1 (1965)
- TRP Fund VI, LLC v. PHH Mortgage Corp., 138 Nev. Adv. Op. 21, 506 P.3d 1056, 1058 (2022)

OPINION

In Re: Lenk Family Tr.

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: THE LENK No. 85457

FAMILY TRUST.

ROBERT R. PILKINGTON; AND

DENISE L. PILKINGTON,

F" d Appellants, NOV 0 2022 vs.

THE LENK FAMILY TRUST; HUNTER

LIGGETT; JILL RENE STYNDA;

JANET E. LENK COHEN; CARIN

LENK SLOAN; KRISTIN NOEL LENK

PFEIFER; AND GINGER STUMNE,

NYE COUNTY PUBLIC

ADMINISTRATOR,

Respondents.

ORDER DISMISSING APPEAL

This is a pro se appeal from district court orders in a probate case dated August 27, 2021;1 September 27, 2021; and August 2, 2022. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge. The notice of appeal was filed in the district court on September 30, 2022. Appellants thereafter filed an emergency motion for stay in this court, and respondents opposed the stay motion and countermoved to dismiss the appeal for lack of jurisdiction. Respondents contend, among other things, that the notice of appeal was untimely filed more than 30 days 1No order was entered on August 27, 2021, but the district court clerk's case appeal statement assumes and appellants' docketing statement confirms that the notice of appeal contains a typo, such that the appealed order is actually dated August 26, 2021.

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MITA • •:11,19,i'7.., zz- from service of notice of entry of each appealed order.² Appellants have filed a reply/opposition to the countermotion, and respondents have filed a reply in support of their countermotion. Appeals from orders entered in probate and trust cases are generally governed by NRS 155.190. See also NRS 164.005. That statute allows for immediate appeal, within 30 days from service of notice of entry, from orders instructing personal representatives and trustees and from orders that grant an order for conveyance directing that persons in possession of estate property transfer or deliver it to those entitled thereto. NRS 155.190(1)(h), (p); see also NRS 164.033 (governing conveyance orders in trust cases and allowing an appeal therefrom within 30 days of notice of entry). Failure to timely appeal under NRS 155.190 precludes any challenge to an order listed therein in an appeal from a later-entered judgment. In re Estate of Herrmann, 100 Nev. 1, 21, 677 P.2d 594, 607

(1984) ("[T]his court has specifically held that unless appeal is taken within

30 days, an order of the kinds mentioned in NRS 155.190 is not thereafter subject to attack."). Here, the August 2021 order appears to have been appealable under NRS 155.190(1)(h) and (p) because it directed the public ² Respondents also contend that appellant Denise Pilkington lacks standing to challenge the 2021 orders, as she was not a party to the action when those orders were entered. In light of this order, we need not address this contention. Respondents further assert that appellants waived their right to appeal in the parties' settlement agreement below and are not aggrieved by the court's order confirming that settlement. From what is currently before this court, it appears that appellants contest, in part, the district court's failure to fully resolve their claims to, and to unfreeze, funds in two Wells Fargo bank accounts that the court had previously found contained at least some funds belonging to the estate, and while we do not now decide the matter, it is not clear that the settlement agreement precludes appellants from seeking relief as to this issue.

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administrator/trustee to take various actions and also directed appellant Robert Pilkington to return estate and trust property. Notice of entry of the August 2021 order was served on August 26, 2021. The September 2021 order further directed Robert Pilkington to return estate and trust property and thus likewise appears appealable under NRS 155.190(1)(p); notice of the September 2021 order's entry was served on September 27, 2021. Finally, the August 2022 order, notice of entry of which was served on August 4, 2022, confirmed a settlement agreement among the parties acknowledging that certain trusts and a pour-over will were invalid, providing that appellants had

no authority to transfer estate or trust assets, directing the court-appointed fiduciary to transfer such assets to the estate for further administration, and closing the case upon such transfer. That order appears to fall under NRS 155.190(1)(i); see also NRS 155.190(1)(b) (refusing to admit a will to probate). The notice of appeal was filed more than 30 days after notice of entry of each appealed order was served and is thus untimely. Moreover, to the extent that appellants assert jurisdiction over the orders pursuant to NRAP 3A(b)(1) (final judgment) and (5) (orders refusing to dissolve an attachment), the notice of appeal is likewise untimely. NRAP 4(a)(1) (providing that notices of appeal must be filed within 30 days from when notice of the appealed order's entry is served). In their docketing statement, appellants suggest that the appeal is timely under NRAP 4(a)(6) (premature notice of appeal) because the district court denied an NRCP 60(b) motion on October 12, 2022.³ But the NRCP 60(b) motion was filed on February 18, 2022, which was not within the timeframe in which tolling motions must be filed, and thus the motion could not toll the appeal period. NRAP 4(a)(4); see NRCP 50(b); ³This court has not received any notice of appeal from the October 12 order.

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³, t 1,147A NRCP 52(b); NRCP 59(b), (e). And in their response to the countermotion to dismiss, appellants assert that the appeal is timely because the appealed orders are void. However, allegations that an order is void does not waive the time period to appeal, which is jurisdictional. *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) ("Filing a timely notice of appeal is jurisdictional and an untimely appeal may not be considered."); *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256, 167 P.2d 648, 651

(1946) (distinguishing between direct attacks, like an appeal in an original

action to have an order vacated or reversed, and collateral attacks through other proceedings), overruled on other grounds by *Poirier v. Bd. of Dental Exam'rs*, 81 Nev. 384, 404 P.2d 1 (1965).

Accordingly, as we lack jurisdiction, we grant the countermotion and ORDER this appeal DISMISSED.⁴ • 17, —67. Hardesty Stiglich Herndon 41n light of this order, appellants' emergency motion for stay is denied as moot. Nevertheless, we note that appellants' failure to first seek relief in the district court per NRAP 8(a)(1) would preclude relief. See *TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev. Adv. Op. 21, 506 P.3d 1056, 1058

(2022) (explaining that a belief that the district court will not grant a stay

motion does not excuse the requirement that such relief first be sought in the district court, as 'ilimpracticable' requires the movant to show that it was 'not capable' of first seeking relief in the district court or that such an act could not be done").

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4 In47A cc: Hon. Kimberly A. Wanker, District Judge Denise L. Pilkington Robert R. Pilkington
Anthony L. Barney, Ltd. Roland Law Firm Law Office of Sean M. Tanko, Ltd. Nye County Clerk
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