

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)

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