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Summary of Fulbrook v. Allstate Ins. Co., 131 Nev. Adv. Op. 33 (Jun. 4, 2015)

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CIVIL PROCEDURE: REMITTITUR

Summary

The Court held that appellant’s counsel’s “technical difficulties,” with regard to e-mails and case files, was an insufficient basis on which to recall remittitur, because the technical difficulties were unrelated to Nevada’s electronic filing system, which exclusively provides required notifications to counsel.

Background

The Nevada Supreme Court affirmed the judgments of the district court—on “consolidated appeals from a final judgment and a post-judgment order in an insurance matter”—in an order entered on January 30, 2015. Pursuant to NRAP 40(a)(1), “the time for filing a petition for rehearing expired on February 17, 2015. No petition for rehearing was filed, and the remittitur was issued on February 24, 2015, as provided in NRAP 41(a)(1).”

Appellants’ counsel filed a motion to recall the remittitur on February 27, 2015. Counsel “did not become aware of the order of affirmance” until February 26, 2015, “due to technical difficulties experienced by . . . counsel due to a virus on its servers as well as switching to a new case management system.” Specifically, counsel had trouble with case files and e-mails, and as a result, the e-mail notification “slipped through.” Counsel’s office checked the case’s status on the “Nevada Supreme Court website” only twice: on January 26, before the order was entered, and again on February 26, after remittitur was issued.

Discussion

“Remittitur will be recalled when, but only when, inadvertence, mistake of fact, or an incomplete knowledge of the circumstances of the case on the part of the court or its officers, whether induced by fraud or otherwise, has resulted in an unjust decision.²” Here, counsel’s technical difficulties were unrelated to the actual service of notice. The Nevada Electronic Filing and Conversion Rules provide that: “[w]hen a document is electronically filed, the court . . . must provide notice to all registered users on the case that a document has been filed and is available on the electronic service system document repository . . . This notice shall be considered as valid and effective service of the document on the registered users and shall have the same legal effect as service of a paper document.³” The required notice is only the notification provided within the electronic filing system; e-mail notifications are merely a courtesy.

Here, official the Court sent notice of the order of affirmance to appellants’ counsel’s electronic filing account. Counsel’s receipt of the accompanying courtesy e-mails is irrelevant, because counsel did not indicate an inability to access his electronic filing account during that time. To the contrary, counsel accessed it to electronically file documents in another case on

¹ By Walter Fick.

² *Wood v. State*, 60 Nev. 139, 141, 104 P.2d 187, 188 (1940).

³ NEFCR 9.

February 3, 2015. Thus, if counsel had checked the notifications at that time, or any other time between January 30 and February 17, he would have been aware of the dispositional order.

Conclusion

Appellant counsel's technical difficulties were irrelevant, as he would have been aware of the dispositional order if he had checked the status of his case more frequently than once every 30 days. Thus, appellants did not demonstrate a basis on which the remittitur should be denied.