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### Southworth v. Eighth Judicial Dist. Court, 134 Nev. Adv. Op. 20 (Mar. 29, 2018)

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CIVIL PROCEDURE: JURISDICTION OVER UNTIMELY APPEAL

**Summary**

The court determined that Justice Court Rule of Civil Procedure 98 requiring appeals in small claims court to be filed within five days was jurisdictional and mandatory. The district court cannot use its discretion to expand the time to appeal.

**Background**

Petitioner Southworth filed a small claims complaint in Justice Court against Respondent Las Vegas Paving Corporation (LVPC). On March 22, 2017, the justice of the peace pro tempore granted Southworth full relief and entered final judgment. Over two weeks later, on April 7, 2017, LVPC appealed the final judgment in district court.

Southworth moved to dismiss the appeal pursuant to Justice Court Rule of Civil Procedure (JCRCP) 98, which requires that notices of appeal be filed within five days of the final judgment. LVPC countered that the district court should use its discretion under JCRCP 1 to extend the temporal limit under JCRCP 98 since JCRCP was confusing and the appeal was only two days late. The district court agreed, denied Southworth's motion to dismiss, and exerted jurisdiction over the matter. Southworth petitioned the Nevada Supreme Court for writ relief.

**Discussion**

Generally, the court will not entertain writ petitions contesting the district court's appellate review of justice court decision. However, the court will exercise its discretion if the district court has exceeded its jurisdiction.<sup>2</sup> Because Southworth contested the district court's jurisdiction, the court determined that writ relief was appropriate.

JCRCP 98 governs small claims appeals in justice courts and requires appeals to be filed within five days of the entry of judgment. JCRCP 72 provides that if the appellate fails to take any other measures, the validity of the appeal is not affected. Taken together JCRCP 98 and 72 mean the failure to file an appeal within five days "clearly affects the validity of the appeal."<sup>3</sup> Finally, JCRCP 1 only allows the district court to use its discretion if "literal application of [the] rule[s] would work hardship or injustice." The court determined that district courts cannot use this broad rule to expand the time to appeal under JCRCP 98.

**Conclusion**

JCRCP 98 is jurisdictional and mandatory, and, accordingly, the court granted Petitioner's writ of prohibition.

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<sup>1</sup> By Lucy Crow.

<sup>2</sup> *State v. Eight Jud. Dist. Ct. (Hedlund)*, 116 Nev. 127, 134, 994 P.2d 692, 696 (2000).