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9-29-2011

### Summary of Weddell v. Stewart, 127 Nev. Adv. Op. No. 58

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*Nevada Law Journal*

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#### Recommended Citation

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*Weddell v. Stewart*, 127 Nev. Adv. Op. No. 58 (Sept. 29, 2011)<sup>1</sup>

## MISCELLANEOUS – COURT PRACTICE AND FILING FEES

### **Summary**

Motions for reconsideration of Supreme Court order dismissing appeal from an order awarding attorney fees in a pending case (Docket No. 55981) and of Supreme Court order dismissing appeal from an order denying a motion to set aside a judgment in a closed case (Docket No. 56473).

### **Disposition/Outcome**

As to Docket No. 56473, the Court directed the clerk to return the motion for reconsideration, unfiled. The Court held that Docket No. 56473 was closed, and would remain closed. As to Docket No. 55981, the Court denied the motion for reconsideration.

### **Factual and Procedural History**

The underlying district court case resulted in a final judgment against appellants in consolidated civil cases alleging various tort, contract, and declaratory relief claims. Appellants filed three appeals, two of which are at issue in this ruling. The first appeal at issue, Docket No. 55981, is an appeal from a subsequent award of attorney fees. This appeal was docketed in the Court on May 6, 2010 but was not accompanied by the requisite filing fee. On May 10, appellants filed a “Withdrawal of Notice of Appeal,” saying that they had already filed an appeal, No. 55200, and did not need another number. However, the Court said this was erroneous because it was an appeal from an order regarding attorney fees, which constitutes an independently appealable special order after final judgment.<sup>2</sup>

On May 11, 2010, appellants filed an “Amended Notice of Appeal” from the award of attorney fees, Docket No. 55981, pursuant to NRAP 4(a)(7). Appellants filed the appeal to supplement and incorporate the previous Notices of Appeal from all Order and Judgments in district court. Appellants misapplied NRAP 4(a)(7), which states that “[n]o additional fees shall be required if any party files an amended notice of appeal in order to comply with the provisions of this Rule.” Attempting to apply an amended notice of appeal when the subject order is independently appealable does not follow the provisions of NRAP 4(a)(7), which does not apply in this instance.

On May 13, 2010, the Court issued a notice to pay the fee within 10 days and warned that failure could result in sanctions and dismissal. After no fee was paid, the Court sent another notice on September 16, 2010, instructing appellants to pay the fee within 10 days or counsel would be referred to the State Bar of Nevada for investigation. Counsel never paid the filing fee and on November 12, 2010, the Court issued an order dismissing the appeal. Remittitur was not issued in Docket No. 55981, because the instant motion for reconsideration was filed before it could be.

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<sup>1</sup> By Bryan Schwartz

<sup>2</sup> NEV. R. APP. P. 3A(b)(8); *Smith v. Crown Financial Services*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995).

The second appeal at issue is Docket No. 56473, dated July 28, 2010, which is an appeal from a subsequent order denying a motion to set aside the judgment. However, the requisite filing fee was not attached. On July 28, 2010, the Court issued a notice to pay the filing fee within 10 days, explaining that nothing would be done until the fee was paid. and if it was not paid then it would be dismissed. Still no filing fee was paid. On August 16, 2010, the Court issued an order dismissing the appeal for failure to pay fee. Remittitur in Docket No. 56473 was issued on September 10, 2010 and the case was closed.

On November 17, 2010, appellants submitted the instant motion for reconsideration in Docket Nos. 55981 and 56743. Appellant's counsel claimed that he believed in good faith that NRAP 4(a)(7) applied to these appeals and that he was not obliged to pay. Appellant's counsel argue that did not realize his mistake until the court dismissed his appeal and referred him to the State Bar. Counsel asked the Court to permit him to pay the fees and reinstate the appeals.

### **Discussion**

The Court considered both motions in a per curiam opinion. The Court held that despite the current economic climate, it must follow the rule of law and resolve every dispute in a fair, impartial, and timely manner. It further stated that the procedural rules governing timelines and filing fees exist to promote cost-effective and timely access to the courts. These goals are infringed when the Court has to constantly remind parties to pay their filing and financial obligations to the appellate process. Parties must follow these procedural rules in order for the court to continue to fulfill its responsibility of resolving legal disputes in a fair, efficient, and timely manner. The Court stated that it would no longer tolerate procedural deficiencies. No action would be considered until the requisite filing fee was paid. The fee is due at or before the matter has been entered on the docket.<sup>3</sup> If the matter is docketed without the required fee, the clerk will send one notice to remit the filing fee. If the fee is not paid within the specified time, the matter will be dismissed.

Whenever an appeal is taken to the Court, the clerk can demand and receive the requisite fee at or before the time the appeal is entered.<sup>4</sup> The filing fee is \$250 for each notice of appeal filed and is to be paid upon filing a notice of appeal.<sup>5</sup> All fees must be paid in advance if demanded.<sup>6</sup> Payment for Docket No. 55981 and Docket No. 56473 was due at the time each was filed but none was submitted. For each appeal, the payment was demanded, yet no fee was paid.

The Court ruled that parties cannot avoid payment required by specific rules of appellate procedure by relying on rules of more general application. The Court examined the appellant's reliance on NRAP 4(a)(7) to submit amended notices of appeals without filing fees from the district court order awarding attorney fees and from the district court order refusing to set aside judgment. Rules of statutory construction provide that specific statute takes precedence over a general statute.<sup>7</sup> Also, rules of statutory construction apply to court rules.<sup>8</sup> Therefore, Appellants should not have relied on NRAP 4(a)(7) when NRAP 3A(b) specifically governs the

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<sup>3</sup> NEV. REV. STAT. 2.250(1) (2007).

<sup>4</sup> NEV. REV. STAT. 2.250(1)(a), (1)(c)(1) (2007).

<sup>5</sup> NEV. R. APP. P. 3(e).

<sup>6</sup> NEV. REV. STAT. 2.250(5) (2007).

<sup>7</sup> *SIIS v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 580 (1996).

<sup>8</sup> *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 47, 218 P.3d 1239, 1244 (2009).

filing of notices of appeal from special orders made after final judgment, which are separately appealable and therefore subject to payment of a filing fee for each separately appealable determination.

The Court reiterated that parties are not at liberty to disobey notices, orders, or any other directives of the court.

With regards to the two motions before the court, the Docket No. 56473 remittitur has already been issued on September 10, 2010 and the case has been closed for two months at the time they filed their motion for reconsideration. Appellants also did not file a motion to recall the remittitur nor sought leave to file an untimely pleading. Therefore, the Court declines to accept any further filings, including the instant motion for reconsideration. Appellants were put on notice to pay and failed to do so. They also have not submitted a compelling reason why the closed appeal should be reopened. Motion for reconsideration in Docket No. 56473 is rejected and will not be filed.

The Court accepted to file the motion for reconsideration in Docket No. 55981. However, the Court found that reconsideration of the its order dismissing the appeal in Docket No. 55981 was not warranted because appellants have not provided a good reason for reconsideration. Appellants' counsel failed to comprehend that an appeal from a special order after a judgment is independently appealable and thus requires a separate filing fee.<sup>9</sup> Ignorance of the law is not a sufficient excuse and the motion for reconsideration of the order dismissing the appeal in Docket No. 55981 is denied.

### **Conclusion**

Unless a party is exempt from filing fees, the Court will not consider the merits of any matters presented for filing until the fees have been paid. Failure to pay the requisite fee in a timely manner will result in dismissal.

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<sup>9</sup> NEV. R. APP. P. 3(e), 3A(b)(8); Nev. Rev. Stat. 2.250.