

FILED

2009 OCT 16 PM 12:56  
MAYOR  
CLAYTON BURRIS  
DIST. COURT CLERK

1 Case No. CV 09-9953

2 Dept. No. 1

3  
4  
5  
6  
7 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF LANDER

9 \* \* \* \*

10 MICHAEL MARKING and )  
11 ELIZABETH FLEMING, )  
12 Appellants, )  
13 vs. )  
14 VIRGINIA GALLEGOS, )  
15 Respondent. )  
16 )  
17 )

ORDER

18 On August 10, 2009 the Justice Court of Austin  
19 Township issued Temporary Orders for Protection from Stalking,  
20 Aggravated Stalking, or Harassment (TPO's) pursuant to NRS  
21 200.591 against Michael Marking and Elizabeth Fleming,  
22 Appellants. On August 25, 2009, the Justice of the Peace, the  
23 Honorable Joseph W. Dory, modified the TPO's. At no point was  
24 an application for an extended order filed. On August 14,  
25 2009, Appellants attempted to file a Notice of Appeal with the  
26

1 Austin Justice Court Clerk Patsy Waits, and that appeal was not  
2 accepted or received by the Clerk. On September 17, 2009,  
3 Appellants filed a Notice of Appeal in District Court along  
4 with a Motion to Docket Appeal and a Petition for Writ of  
5 Mandamus. Finally, on September 24, 2009, Appellants filed an  
6 Ex Parte Motion for Order Preserving the Record.  
7

### 8 DISCUSSION

9 In this appeal there are two issues for this Court to  
10 decide: (1) was the Clerk of the Austin Justice Court acting  
11 within the scope of her duties in not accepting the Notice of  
12 Appeal offered by Appellants; and (2) do Appellants have the  
13 right to appeal the TPO's issued against them to the District  
14 Court.  
15

16 First, it is the finding of this Court that the  
17 Austin Justice Court Clerk erred by not accepting Appellants'  
18 Notice of Appeal. Generally the Clerk of the Justice Court is  
19 to accept all filing and pleadings. The Nevada Supreme Court  
20 has stated:

21 The clerk has a ministerial duty to  
22 accept and file documents. She has no  
23 authority to pass upon the validity of  
24 instruments presented for filing. The  
25 power to make any decision concerning  
26 the propriety of any paper submitted or  
the right of a person to file a paper  
is vested in the court not the clerk.  
Bowman v. Eighth Jud. Dist. Ct., 102  
Nev. 474, 478 (1986).

1                   Because the Austin Justice Court erred by not  
2  
3 accepting Appellants' Notice of Appeal, this Court **GRANTS**  
4 Appellants' Writ of Mandamus. In the future, this Court **ORDERS**  
5 the Clerk of the Justice Court to accept and file all documents  
6 and reserve decisions concerning acceptance to the Court.

7                   The second issue this Court is to consider is ~~whether~~  
8 or not Appellants have the right to appeal the TPO issued  
9 against them to the District Court. NRS 200.594(1) states: "A  
10 temporary order issued pursuant to NRS 200.591 expires within  
11 such time, not to exceed 30 days, as the court fixes..." Id.

12                   In the present appeal, the TPO was issued on August  
13 8, 2009, and the Justice Court fixed an expiration date of  
14 September 10, 2009, exceeding the 30-day limit. Under NRS  
15 200.591(4), "If an extended order is issued by a Justice Court,  
16 and interlocutory appeal lies to the district court, which may  
17 affirm, modify or vacate the order in question..." Id.

18                   Because the TPO's issued by the Austin Justice Court  
19 exceeds the 30-day limit established by statute, this Court  
20 must decide if the TPO's issued by the Justice Court constitute  
21 extended orders. If the TPO's are deemed to be extended  
22 orders, Appellants would have the right to an interlocutory  
23 appeal to the district court.  
24  
25  
26

1           It is this Court's finding that the TPO's issued by  
2 the Justice Court were not extended orders. There is no  
3 indication from the record, or from the TPO's themselves that  
4 the Justice of the Peace intended to extend his original orders  
5 or that an application for extended order was filed. While the  
6 Justice Court was not accurate in that the TPO's were written  
7 for 32 days, it is the finding of this Court that the TPO's  
8 were valid for the statutory maximum of 30 days (September 6,  
9 2009). It is further evidenced that the original TPO's were  
10 not extended orders because during the 30-day time period of  
11 the TPO's, neither the original applicant, Virginia Gallegos,  
12 or the Court attempted to extend the orders.  
13  
14

15           Thus, pursuant to NRS 200.591(4), the TPO's in this  
16 case were not extended orders and as such, Appellants do not  
17 have standing to bring an interlocutory appeal in District  
18 Court. It is for these reasons this Court **DENIES** Appellants'  
19 Motion to Docket Appeal and Appellants' Motion for Order  
20 Preserving the Record.  
21

#### 22           CONCLUSIONS

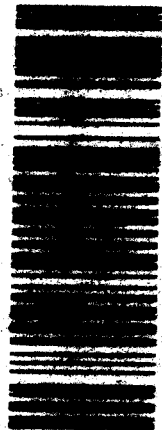
23           Because of the aforementioned reasons, this Court  
24 **GRANTS** Appellants' Motion to Docket Appeal and Appellants'  
25 Motion for Order Preserving the Record.  
26

///  
26



GLADYS BURRIS  
LANDER COUNTY CLERK  
315 S HUMBOLDT ST  
BATTLE MOUNTAIN, NV 89820

**CERTIFIED MAIL**



7004 2510 0001 2242 6664



UNITED STATES POSTAGE  
PITNEY BOWES  
02 1P \$ 006.710  
0004182490 OCT 16 2009  
MAILED FROM ZIP CODE 89820

*2*  
MICHAEL MARKING  
GENERAL DELIVERY  
AUSTIN, NV 89310

10/19