

COURT OF APPEALS, STATE OF COLORADO Colorado State Judicial Building 2 East 14 th Avenue Denver, Colorado 80203 Telephone: (303) 837-3785	
Appellant: SEAN HARRINGTON and Appellee: CHRISTY RYAN	
Sean Harrington 197M Boston Post Road, West Suite #151 Marlborough, MA 01752	↑ COURT USE ONLY ↑ Case Number:
APPEAL FROM THE DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO Trial Court Case No.: 99DR3717, Division 3, Judge Jane A. Tidball presiding Party Initiating Appeal: Sean Harrington (Respondent)	
SEPARATE NOTICE OF APPEAL	

The Appellant, above named, pursuant to C.A.R. §§ 3 ~ 4, submits the within NOTICE OF APPEAL and in support, thereof, states as follows:

1. On the or about the 12th of September, 2003, Harrington submitted a timely Notice of Appeal following the denial of a combined and verified motion he had filed with the trial court pursuant to C.R.C.P. §§ 59 and 60(b).

2. Subsequent to the initial Notice of Appeal, the district court entered several orders that it had already been divested jurisdiction of as well as one for attorney fees that it did have authority to enter. See generally, Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974); Hylton v. City of Colorado Springs, 32 Colo. App. 9, 505 P.2d 26 (1973), People in the Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994); and Koontz v. Rosener, 787 P.2d 192 (Colo. App. 1989).
3. On or about the 7th of November, 2003, Harrington filed a Motion to Grant Leave to Amend Notice of Appeal.
4. To date, the latter motion has not been adjudicated by this honourable court. However, because a Notice of Appeal is a notice pleading and is advisory in nature (see Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980)), Harrington is not certain if it is necessary for him to seek and await permission to amend the prior Notice. What Harrington is certain of, however, is that the timely filing of the Notice of Appeal is mandatory and jurisdictional. See Chapman v. Miller, 29 Colo. App. 8, 476 P.2d 763 (1970); Cline v. Farmers Ins. Exchange, 792 P.2d 305 (Colo. App. 1990). The order for attorney fees was entered by the trial court on the 29th of November, 2003 and the post trial motion under C.R.C.P. §§ 59 and 60 was denied on Nov. 20th and, because the attorney fees order requires a, “*Separate notice of appeal*,” (see Dawes Agency v. American Property Mortg., 804 P.2d 255 (Colo. App. 1990)), the time for filing a Notice of Appeal on that matter has nearly elapsed. Just this month, the 10th Cir. Court of Appeals held that, although, “*a timely notice of appeal is mandatory and jurisdictional, the technical requirements of the notice itself are liberally construed to avoid injustice.*” McIntosh v. Green, ___ P.2d ___ (10th Cir. Case No. 03-6038 Dec. 2003) citing Smith v. Barry, 502 U.S. 244, 248-49 (1992). See also Knox v. Wyoming, 959 F.2d 866, 867-68 (10th Cir. 1992) (treating *pro se* application for certificate of probable cause as a misfiled notice of appeal); Hoover v.

United States, 268 F.2d 787, 788-89 (10th Cir. 1959) (treating motion to proceed on appeal in *forma pauperis* as notice of appeal). Similarly, other jurisdictions have adopted the same: “*notice of appeal is to be liberally construed as a whole.*” Glassberg v. Warshawsky, 266 Ill. App. 3d 585, 638 N.E.2d 749 (1994).

5. Therefore, in the interests of preserving this matter for the jurisdiction of this court, Harrington is issuing this separate Notice of Appeal, which may be consolidated into the existing appeal at a later time or upon motion of this court. See C.A.R. §3(c). For the purposes more fully set forth, *supra*, Harrington incorporates by reference §§ I ~ V of his previously submitted Notice of Appeal, hereto.

I. DESCRIPTION OF NATURE OF CASE AND DISPOSITION IN TRIAL COURT:

This is a domestic relations action brought before Judge Jane A. Tidball, First Judicial District Court Judge, Division 3, pursuant to a petition for Marriage Resolution brought against the Appellant by Christy Ryan (heretofore referred to as, “*Appellee,*” or *Ryan*) and her attorney, also in the role of co-plaintiff and complaining witness, Madeline Wilson-Hollis (heretofore referred to as, “*Wilson*”). The case has persisted for three, almost four years, to date.

Recently, the trial court entered an Order for a punitive award of attorney fees under C.R.S. §14-10-119, having issued no findings of fact relative to the financial resources of the parties or who was responsible for initiating the litigation and stating that the sole reason was because Harrington had [inadvertently] failed to sign one of his motions. The motion was stricken from the record and the trial court declined to reach the merits of the motion and underlying claims. Further, the trial court entered other orders during a time when it was divested of jurisdiction by the pendency of the instant appeal. See Molitor v. Anderson, 795 P.2d 266 (Colo. 1990)

(Generally, once an appeal is taken, a trial court is divested of jurisdiction to determine substantive matters that directly affect the judgment being appealed unless the appellate court has issued a remand order.); see also People v. Dillon, 655 P.2d 841, 844 (Colo. 1982). Further, a trial court's jurisdiction is not restored until the mandate from the appellate court issues. See Hrabczuk v. John Lucas Landscaping, 888 P.2d 367, 368 (Colo. App. 1994)

JUDGMENT OR ORDER BEING APPEALED: Order of October 29th, 2003, awarding attorney fees pursuant to C.R.S. §14-10-119, requiring mediation, denying motions, *inter alia*.

WHETHER THE JUDGMENT OR ORDER RESOLVED ALL ISSUES BEFORE THE TRIAL COURT: Yes

WHETHER JUDGMENT WAS FINAL IN ACCORDANCE WITH C.R.C.P. 54(B): Yes

DATE JUDGMENT WAS ENTERED: Judgment was entered on October 29th, 2003.

WHETHER ANY MOTIONS FOR POST TRIAL RELIEF WERE FILED AND, IF SO, THE RELIEF SOUGHT: Yes. The following Motion was filed pursuant to C.R.C.P. §§ 59, 60 and 62 (“*Motions for post-trial relief may be combined or asserted in the alternative.*” See C.R.C.P. §59(a)):

1. Respondent's Motion for Stay of Execution (or, in the Alternative, Motion to Strike Order of 29Oct03)

DATE MOTIONS FOR POST TRIAL RELIEF WERE FILED: The post-trial motion was placed in the U.S. Mail, postage prepaid, on the 7th day of November, 2003. .

DATE OF POST TRIAL MOTIONS RULING : The post-trial motion was denied by an Order of the trial court dated the 20th of November, 2003.

WHETHER EXTENSION WAS GRANTED TO FILE NOTICE OF APPEAL: No

II. ISSUES PROPOSED TO BE RAISED ON APPEAL

Issues on appeal may include, but are not limited to:

- a. Did the court err, as a matter of law, by awarding attorney fees under C.R.S. §14-10-119 because Harrington had inadvertently failed to sign his pleading?
- b. Did the court err, as a matter of law or an abuse or discretion or both, by striking Harrington's unsigned pleading without affording him an opportunity to correct the error, as per C.R.C.P. §11?
- c. Did the court err, as an abuse of discretion, by failing to issue any findings relative to the financial resources of the parties, as is required under C.R.S. §14-10-119?
- d. Was the court's intention in awarding fees under C.R.S. §14-10-119, as perceived by the "reasonable person," to equalize the parties or place them on an "equal footing."
- e. Did the court err, as evincing bias, by citing Harrington's status as a *pro per* litigant, in the language leading up to the justification of a punitive award of attorney fees.?
- f. Did the trial court act, in the absence subject matter jurisdiction, by issuing orders (other than for attorney fees), while the case was on appeal?
- g. Is there any evidence in the record that the trial court judge read Harrington's post-trial motion and gave it any consideration?
- h. Does this award for attorney fees contribute the overall perception of bias as alleged by Harrington in the existing appeal?
- i. Is the trial court's *sua sponte* reliance on technical and minute imperfections resulting in a punitive disposition of the litigation, denying the adjudication of justiciable controversies, denying substantial justice or evidence that the trial court judge has assumed a role of prosecutor and has relieved the opposing party from the responsibility of raising objections?

III. TRANSCRIPT INFORMATION

WHETHER A TRANSCRIPT OF EVIDENCE IS NECESSARY: Yes; the original order, post-trial motion and subsequent order denying that motion were all included in Harrington's Designation of Record on Appeal, which directed that all original pleadings, motions, briefs, exhibits, judgments and orders entered on or after June 15th, 2003. The record was transmitted to this court on or about the 18th of December and, thus, should already contain the orders and motions.

NAME OF THE COURT REPORTER: n/a

IV. **PREARGUMENT CONFERENCE:** Not requested

V. **ATTORNEY INFORMATION**

Attorney for Appellant: None as of the time of this Notice

Attorney for Appellees: Madeline Wilson, ESQ Atty. Reg. # 24060
501 S. Cherry Street, Suite 610
Denver, CO 80206

Respectfully submitted,

Sean Harrington, Appellant

CERTIFICATE OF MAILING

I hereby certify that I did place, in the United States Mail, postage prepaid this 24th day of December, 2003, a true and correct copy of the foregoing instrument addressed hereto:

Madeline Wilson-Hollis, ESQ
501 S. Cherry Street, Suite 610
Denver, CO 80206

Colorado Court of Appeals
Colorado State Judicial Building
2 East 14th Avenue
Denver, CO 80203

Jefferson County District Court -Div. 3
100 Jefferson County Parkway
Denver, CO 80206
Golden, CO 80401