

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE MOYA
OLSEN LEAR TRUST.

No. 46749

JOHN OLSEN LEAR,
Appellant,
vs.
JAMES L. MURPHY,
Respondent.

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying a petition concerning the internal affairs of a trust. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

In his response to appellant John Olsen Lear's civil proper person appeal statement, respondent James L. Murphy, Trustee of the Moya Olsen Lear trust, asserts that this court should dismiss this appeal on the basis that we do not have jurisdiction. Specifically, the Trustee asserts that (1) Lear never appealed a September 2005 district court order resolving all parties' petitions, and (2) the court's January 2006 order referenced in Lear's notice of appeal did not change the previous September 2005 order in any material way. Lear responds that the September 2005 order neglected to address his petition and that when the "proper order" in January 2005 was issued, he filed a timely appeal from that order. We agree with the Trustee that there is a jurisdictional defect in this appeal.

In June 2005, Lear filed a petition, in which he alleged that the Trustee breached his duty to the Trust by improperly distributing various items of personal property that belonged to the estate. Lear

requested that the district court consider the Trustee's "misconduct in the administration of the estate," remove him as Trustee, and order the return of all "illegally distributed" items to the estate. Lear added that if Murphy remained as Trustee, he should be required to return the "illegally distributed" items to the estate and then list each item sold or given to various individuals.

The Trustee opposed the petition and also filed a separate petition for court approval of a "third account," settlement agreement, and Trustee's fees. In August 2005, after hearing argument on both parties' petitions, the district court orally (1) denied Lear's petition, finding, among other things, that there was nothing to suggest that the Trustee acted improperly and that his "actions appear[ed] reasonable, prudent, and proper in looking at the overall estate"; and (2) granted the Trustee's petition.

In the district court's resulting September 16, 2005 written "Order Approving Third Account, Approving Settlement Agreement and Approving Trustee's Fees," the court, in relevant part, noted the August 2005 hearing and "approved[ed] and confirm[ed] the Trustee's account and report and all the Trustee's actions with respect to the sales and distribution of the personal property assets." Notice of entry of this order was filed on September 21, 2005. No party appealed from this order.

Thereafter, in December 2005, Lear filed a document entitled "Motion for Request of Written Order." In this motion, Lear acknowledged that the court had orally denied his petition at the hearing and that the court had issued the September 2005 order approving the Trustee's account. Lear maintained, however, that he needed a written order from the court explicitly denying his petition in order to file a timely appeal.

Thus, Lear requested that the court issue an order formally denying his petition. On January 3, 2006, the district court issued said order, and Lear filed the instant appeal from that order.

Under NRS 164.015(3), upon holding a hearing to address a petition concerning the internal affairs of a nontestamentary trust, the district court must issue an order that it deems appropriate. “The order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries.”¹ The order is appealable and under NRS 164.015(3), a party has thirty days to file a notice of appeal from the date of the order’s notice of entry.

In this case, Lear’s petition centered on his claim that the Trustee acted improperly, and he requested (1) the Trustee’s removal, (2) return of all “illegally distributed” items to the estate, and (3) an accounting of items sold or given to various individuals. Because the district court’s September 2005 order—which approved the Trustee’s account and report, and “all the Trustee’s actions with respect to the sales and distribution of the personal property assets”—necessarily disposed of all the issues presented in Lear’s petition as well as the Trustee’s petition and left nothing for district court’s future consideration with respect to those petitions, that order constituted the final appealable order in this matter.² Accordingly, Lear was required to file a notice of appeal from the

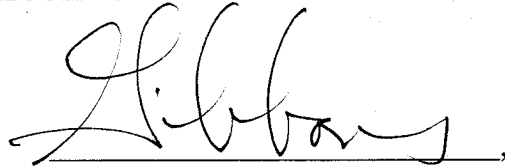
¹NRS 164.015(3).

²See NRS 164.015(3); See generally Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (providing that an order is final and appealable when it resolves all of the parties’ claims, rights, and liabilities); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991); Morrell v. Edwards, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982) (providing that an

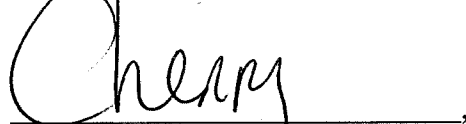
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September 2005 order thirty days after notice of entry of the order.³ As stated above, Lear did not do so. Accordingly, as we lack jurisdiction, we

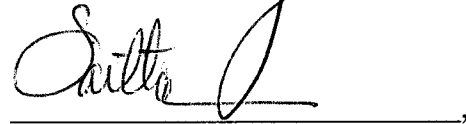
ORDER this appeal DISMISSED.

 _____, J.

Gibbons

 _____, J.

Cherry

 _____, J.

Saitta

cc: Second Judicial District Court Dept. 7, District Judge
John Olsen Lear
McDonald Carano Wilson LLP/Reno
Washoe District Court Clerk

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appeal from an amended judgment is proper only when it “disturbed or revised legal rights and obligations which the prior judgment had plainly and properly settled with finality”).

To the extent that Lear’s “Motion for a Written Order” could be construed as a motion to alter or amend, that motion was filed more than ten days after service of written notice of the September 2005 order’s entry, and thus did not toll the appeal period. See NRCPC 59(e).

³NRS 164.015(3).