IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD J. LAING,
Appellant,
vs.
ELIZABETH ANN LAING,
Respondent.

No. 51251

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from findings of fact, conclusions of law and decree of divorce and an order after hearing entered in the district court. Our preliminary review of the docketing statement and documents submitted to this court pursuant to NRAP 3(e) revealed two potential jurisdictional defects. Accordingly, on December 5, 2008, this court directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant has filed a response to our show cause order and respondent has filed a reply.

Specifically, our December 5, 2008, order noted that the findings of fact, conclusions of law, and decree of divorce might not be substantively appealable as it appeared that the parties' claims for custody of the minor child, alimony, and attorney fees might remain pending below. In his response, appellant argues that the custody issue is moot, as the child is now over the age of 18, and that attorney fees were accounted for in the parties' decree of divorce. It appears that these assertions are correct. Further, although the district court failed to make

any ruling on respondent's claim for alimony, we elect to treat such failure as an implicit denial of the claim.[1] Cf. Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000). Accordingly, it appears that all claims asserted below have been resolved and that the May 24, 2007, findings of fact, conclusions of law, and decree of divorce constitute a final judgment.

Our order to show cause also noted that if the May 24, 2007, order did constitute a final judgment, it appeared that the notice of appeal was untimely filed as to that order. Appellant was served with written notice of entry of the findings of fact, conclusions of law, and decree of divorce on May 25, 2007, by mail. The notice of appeal was not filed in the district court until February 28, 2008, long after the 30-day appeal period prescribed by NRAP 4(a)(1) had expired.

Appellant argues in his response that a motion to alter or amend, a tolling motion, was filed on August 15, 2007. See NRAP 4(a)(4). The motion to alter or amend was denied in the district court's "Order After Hearing" entered on February 4, 2008. As the notice of appeal was filed within 30 days thereafter, appellant argues that the notice of appeal was timely filed.

A motion to alter or amend operates to toll the time for filing a notice of appeal only if the tolling motion is timely filed under the Nevada Rules of Civil Procedure. NRAP 4(a)(4). A motion to alter or amend is timely if it is filed within ten days after service of written notice of entry of judgment. NRCP 59(e). Here, appellant was served with notice of entry of

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[1]We note that appellant's response to our order to show cause argues that no issues regarding alimony remain pending below.

the final judgment on May 25, 2007. Appellant's motion to alter or amend was not filed until August 15, 2007. Thus, the motion to alter or amend was not timely filed and does not operate to toll the time to file the notice of appeal.[2] Accordingly, as the notice of appeal was untimely filed as to the district court's May 24, 2007, findings of fact, conclusions of law, and decree of divorce, this court lacks jurisdiction over the appeal of that order.

Our order to show cause also noted that the district court's February 4, 2008, order after hearing may not be substantively appealable, as no statute or court rule authorizes an appeal from an order holding a party in contempt or denying a motion to alter or amend. See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000) (holding that this court does not have jurisdiction over an appeal from a contempt order); Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (holding that, to be appealable under NRAP 3A(b)(2), a special order made after final judgment "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered"). Appellant's response fails to address the substantive appealability of the February 4, 2008, order. We elect to treat appellant's failure to respond as an admission that this court lacks jurisdiction over the February 4, 2008, order. Cf. King v. Cartlidge, 121 Nev. 926, 124 P.3d 1161 (2005) (stating that the district court has discretion to consider the

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[2]Appellant argues that he never received the notice of entry of judgment and that the time to file a tolling motion thus never began to run. However, the district court held a three-day evidentiary hearing regarding the timeliness of the motion to alter or amend, after which it determined that service of notice of entry was properly made and that the motion was untimely filed.

failure to oppose a motion as an admission of merit and as consent to granting of the motion).

Having concluded that this court lacks jurisdiction over both district court orders identified in appellant's notice of appeal, this appeal is dismissed.

It is so ORDERED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Michael P. Gibbons, District Judge
Carolyn Worrell, Settlement Judge
Richard F. Cornell
Jennifer S. Anderson
William F. Heckman
Lemons Grundy & Eisenberg
Douglas County Clerk