

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DOTY,
Appellant,
vs.
TONYA DUBIN,
Respondent.

No. 66870

FILED

APR 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order establishing child custody. Eighth Judicial District Court, Family Court Division, Clark County; William B. Gonzalez, Judge.


Our review of the documents before us on appeal reveals a jurisdictional defect, as the notice of appeal was prematurely filed. In the underlying action, the district court's custody order was entered on September 11, 2014, and notice of entry of that order was served on appellant by mail on October 9, 2014. One day later, on October 10, 2014, appellant filed a motion seeking, among other things, reconsideration of the custody order. Because this motion was filed within ten days of service of notice of entry of the district court's order and sought a substantive change to that order, the motion qualified as a tolling motion under NRCP 59. See NRAP 4(a)(4)(C) (explaining that an NRCP 59 motion to alter or amend the judgment tolls the time for filing a notice of appeal); *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1192-93 (2010) (recognizing that a timely post-judgment motion for reconsideration that seeks a substantive change to the judgment qualifies as tolling motion under NRCP 59 and NRAP 4(a)(4)). To date,

however, the motion for reconsideration has not been resolved by the district court.¹

Under these circumstances, appellant's notice of appeal was premature, and thus, did not divest the district court of jurisdiction or vest jurisdiction in us on appeal. See NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction."). Accordingly, because we lack jurisdiction over this appeal, we order it dismissed.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David Barker, Chief Judge
Hon. Charles J. Hoskin, Presiding Family Court Judge
Eighth Judicial District Court, Department F
Michael Doty
Robinson Law Group
Eighth District Court Clerk

¹The district court hearing minutes in the record indicate that the reconsideration motion was removed from the district court's calendar in light of the pending appeal and that further proceedings would be vacated until a decision had been rendered in regard to the appeal.