

IN THE SUPREME COURT OF THE STATE OF NEVADA

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE OF BANC OF AMERICA
FUNDING 2006-D TRUST,

Appellant,

vs.

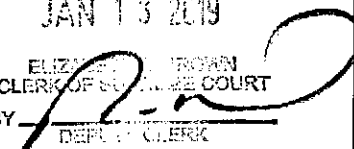
STAR GOLDEN ENTERPRISES LLC
SERIES 3,

Respondent.

No. 77109

FILED

JAN 13 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion for relief under NRCP 60(b). Eighth Judicial District Court, Clark County; James Crockett, Judge.

Our initial review of the docketing statement and documents before this court revealed a potential jurisdictional defect. It appeared that the notice of appeal was prematurely filed after the timely filing of a tolling motion for reconsideration and before that motion was formally resolved. Accordingly, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response, appellant contends that motions for reconsideration are not tolling motions. However, as noted in our order to show cause, motions for reconsideration can toll the time to file the notice of appeal. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (explaining when a post-judgment motion for reconsideration is accorded status under NRCP 59(e) and tolling effect under NRAP 4(a)(4)(C)); *see also Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 314 P.3d 946 (2013) (concluding that a timely NRCP 59(e)

motion generally tolls the time to appeal from any appealable order, not just a final judgment).

Here, it appears that appellant timely filed a motion for reconsideration that qualified as a NRCP 59(e) tolling motion under *AA Primo*. Before that motion was formally resolved, appellant filed the notice of appeal. Accordingly, the notice of appeal is premature.¹ See NRAP 4(a)(6) (a notice of appeal may be dismissed as premature if it is filed before entry of a written order disposing of a timely tolling motion). As this court lacks jurisdiction over a premature appeal, *see id.*, we

ORDER this appeal DISMISSED.²

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

¹The district court issued a minute order on October 9, 2018, orally denying the motion for reconsideration because the district court lacked jurisdiction. This oral order was of no effect. See *Div. of Child & Family Servs. v. Dist. Court*, 120 Nev. 445, 451–54, 92 P.3d 1239, 1243–45 (2004) (explaining that “dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective”). We also note that “[a] premature notice of appeal does not divest the district court of jurisdiction”. NRAP 4(a)(6).

²Appellant may file a new notice of appeal once the district court enters a written order resolving the motion for reconsideration.

cc: Hon. James Crockett, District Judge
Akerman LLP/Las Vegas
Garman Turner Gordon
Eighth District Court Clerk