

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,
Appellant,
vs.
C.D.A.G. HEATHER D. PROCTER;
RENEE BAKER, WARDEN; AND
SHELLY WILLIAMS, CCRM III,
Respondents.

No. 78545-COA

FILED

NOV 05 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

Charles Matthew Wirth appeals from an order of the district court denying a petition for a writ of mandamus filed on October 31, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

A review of the documents submitted to the appellate court pursuant to NRAP 3(g) reveals a jurisdictional defect. Specifically, the notice of appeal appears to be prematurely filed under NRAP 4(a) because it was filed after the timely filing of a tolling motion under NRAP 4(a)(4)(C)¹ and before the tolling motion was formally resolved. A timely tolling motion terminates the 30-day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court

¹Wirth filed an “emergency motion (NRAP 27) for reconsideration (N.R.C.P. 59(e), 60(b))” [sic]. The Nevada Rules of Civil Procedure apply in mandamus actions to the extent they are not inconsistent with NRS 34.150 to 34.290, inclusive. NRS 34.300. NRS 34.150 to NRS 34.290, inclusive, do not contain provisions inconsistent with the relief Wirth sought.

enters a written order finally resolving the motion.² See NRAP 4(a)(4). Accordingly, we conclude we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Charles Matthew Wirth
Attorney General/Carson City
Pershing County Clerk

²We note that at the time of Wirth's appeal, the district court had not set the motion for hearing.