

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE RANDOLPH ISAMAN,

No. 37669

Appellant,

vs.

PATRICIA ANN ISAMAN,

Respondent.

**FILED**

OCT 11 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a final decree of divorce. Respondent has moved to dismiss this appeal on the basis that this court lacks jurisdiction.

On March 12, 2001, the district court entered the final divorce decree. Notice of entry of judgment was served on March 20, 2001. On March 26, 2001, respondent filed a timely NRCP 59(e) and NRCP 60(b) motion to clarify and amend the judgment and decree. Specifically, respondent asked the district court, among other things, to modify the decree to reassign debt on certain distributed property, to distribute certain property that was not addressed in the original decree, and to provide for a buy-back of a portion of respondent's retirement. On April 4, 2001, prior to the district court resolving respondent's motions, appellant filed a notice of appeal.

On June 13, 2001, a hearing was held on the motion to amend. Thereafter, the district court granted in part respondent's motion to alter or amend, and entered an amended judgment and decree on June 25, 2001. Notice of entry of the amended judgment was served by mail on June 29, 2001. Appellant did not file a new or amended notice of appeal.

A timely motion filed pursuant to NRCP 59 terminates the running of the time for filing a notice of appeal.<sup>1</sup> A notice of appeal must be filed after the district court enters a written order resolving the tolling motion and no later than thirty days from the date that written notice of the order is served.<sup>2</sup> "A notice of appeal filed before the formal disposition of any timely post-judgment [tolling] motion . . . shall have no effect."<sup>3</sup>

<sup>1</sup>NRAP 4(a)(2).

<sup>2</sup>Id.

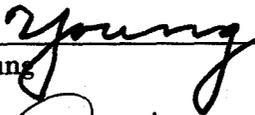
<sup>3</sup>Id.

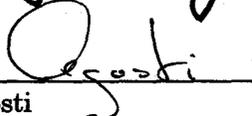
01-17126

Therefore, appellant's notice of appeal, filed before resolution of respondent's motion to alter or amend, was ineffective and failed to vest jurisdiction in this court.

Appellant contends that respondent's motion was actually a motion for rehearing. Moreover, appellant contends that he is appealing from the temporary award of spousal support and from that portion of the decree that awarded respondent permanent spousal support in the amount of \$1,500.00 per month, which the amended judgment did not change. Appellant's contentions do not alter our conclusion that we lack jurisdiction. The record indicates that respondent timely filed a motion to amend pursuant to NRCP 59(e). Specifically, the record indicates that the district court amended the divorce decree to address issues raised in the motion to amend and inadvertently omitted from the original divorce decree. A timely tolling motion serves to suspend the time in which an appeal may be taken, regardless of the issues raised on appeal.<sup>4</sup> The timely filing of a notice of appeal is jurisdictional.<sup>5</sup> "Jurisdictional rules go to the very power of this court to act."<sup>6</sup> Because appellant's notice of appeal was prematurely filed before respondent's tolling motion was resolved, we lack jurisdiction over this appeal. Accordingly, we grant respondent's motion, and we

ORDER this appeal DISMISSED.<sup>7</sup>

  
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Young J.

  
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Agosti J.

  
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Leavitt J.

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<sup>4</sup>Id.

<sup>5</sup>Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

<sup>6</sup>Id.

<sup>7</sup>We approve the October 1, 2001 stipulation for extension of time to file the opposition to the motion to dismiss. Moreover, we grant respondent's September 28, 2001 motion for leave to file a reply to appellant's opposition to the motion to dismiss, and we order the clerk of this court to file the reply provisionally received on September 28, 2001.

cc: Hon. Mario G. Recanzone, Senior Judge  
Richard S. Staub  
Allison W. Joffe  
Lemons Grundy & Eisenberg  
Carson City Clerk