


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT K. MENZER,  
Appellant,  
vs.  
U.S. BANK, N.A., AS TRUSTEE FOR  
RESIDENTIAL FUNDING MORTGAGE  
SECURITIES I, INC., MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2005-SA5,  
Respondent.

No. 84038

FILED

JAN 12 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from district court orders denying relief from a default judgment in a real property dispute. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.<sup>1</sup>

After respondent U.S. Bank encountered difficulties serving its complaint on appellant Robert Menzer, it obtained permission to serve him by publication. When Menzer did not appear in the action, U.S. Bank obtained a clerk's default and default judgment allowing it to foreclose upon Menzer's real property. Despite learning about the default judgment in April 2019, Menzer did not judicially challenge the judgment until October 2020 when he filed a motion to set aside the default judgment as void pursuant to NRCP 60(b)(4) (authorizing relief from a void judgment) due to alleged service defects. The district court denied Menzer's motion. Rather than appeal, Menzer filed a motion to alter or amend the district court order denying him relief from the judgment. The district court also denied that motion finding, in pertinent part that, it was an unauthorized motion for

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

reconsideration. This appeal followed. U.S. Bank argues that we lack jurisdiction to consider this appeal and we agree.

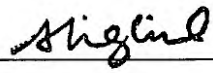
“[T]his court’s appellate jurisdiction is limited, and we may only consider appeals authorized by statute or court rule.” *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (internal citation omitted). Although Menzer purported to base his motion to alter or amend on NRCP 52(b) and NRCP 59(e), the district court found that the motion effectively sought reconsideration. Because Menzer’s motion sought to vacate the default judgment against him, and not to alter or amend the district court’s findings in its order denying his previous request for relief, we agree. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 809, 312 P.3d 491, 498 (2013) (“[T]his court has consistently analyzed a claim according to its substance, rather than its label.”); *Brown*, 129 Nev. at 345, 301 P.3d at 851 (examining the effect of an order to determine whether it is appealable). It is well-settled that an order denying reconsideration is not independently appealable, *see Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007), and does not toll the time to appeal from a district court order denying relief from a final judgment pursuant to NRCP 60,<sup>2</sup> *see* NRAP 4(a)(4) (listing types of motions which effectively toll the time to file a notice of appeal from a final judgment); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581-82, 245 P.3d 1190, 1192-93 (2010) (explaining that a motion for reconsideration must qualify as a motion to alter or amend a judgment in order to have tolling effect on the


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<sup>2</sup>Without tolling, Menzer’s appeal from the district court order denying his motion for relief from the default judgment was untimely and we lack jurisdiction to consider any challenges to that order. *See* NRAP 4(a)(1) (providing that “a notice of appeal must be filed . . . no later than 30 days after the date that written notice of entry of the judgment”).

time to appeal from a final judgment). We therefore lack jurisdiction and must dismiss this appeal. *Brown*, 129 Nev. at 345, 301 P.3d at 851. Accordingly, we

ORDER this appeal DISMISSED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, Sr.J.  
Gibbons

  
\_\_\_\_\_, Sr.J.  
Silver

cc: Hon. Thomas W. Gregory, District Judge  
David Wasick, Settlement Judge  
Tory M. Pankopf, Ltd.  
Wright, Finlay & Zak, LLP/Las Vegas  
McCarthy & Holthus, LLP/Las Vegas  
Douglas County Clerk

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<sup>3</sup>The Honorable Mark Gibbons and the Honorable Abbi Silver, Senior Justices, participated in the decision of this matter under general orders of assignment.