

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT AIRE WELLNESS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
QUALCAN, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Respondent.

No. 87673

FILED

MAR 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a November 1, 2023, second amended judgment. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

When our initial review of this appeal revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, it appeared that after the second amended judgment was filed but before appellant's notice of appeal was filed, respondent filed a motion to alter or amend the judgment and appellant filed a motion to vacate/void or amend the judgment, tolling the time to appeal and rendering the notice of appeal premature. See NRAP 4(a)(4) (regarding tolling motions); NRAP 4(a)(6) (recognizing that this court may dismiss as premature an appeal filed before disposition of all timely motions listed in Rule 4(a)(4)); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1194-95 (2010) (describing when a post-judgment motion carries tolling effect). Appellant

timely filed a response to our show cause order, and respondent timely filed a reply.¹

In its response, appellant agrees that the appeal is premature and should be dismissed, but apparently for reasons other than those stated in the order to show cause. Appellant asserts that the parties voluntarily dismissed their 2015 case with prejudice on July 29, 2019, and because that dismissal constituted the final judgment, the case was improperly reopened in 2023 by filing the confession of judgment, rendering the district court without jurisdiction to further act in the proceedings. Appellant asks that, upon dismissing the appeal, we vacate the orders entered in the 2015 case and remand to the district court clerk to reassign the matter to a different department.

Respondent points out that the tolling motions remain pending below, such that this court lacks jurisdiction. Respondent contends that this court thus has no authority to determine whether the district court has jurisdiction and notes that the jurisdictional issues were raised in one of the tolling motions and thus are pending before the district court.


Having considered the parties' arguments, we conclude that, because the tolling motions remain pending, we lack jurisdiction over this

¹Respondent's unopposed motion for a 4-day extension of time to file the reply is granted; the reply thus was timely filed on March 4, 2024.

appeal. NRAP 4(a)(6). For that reason, we decline to address appellant's arguments concerning the district court's jurisdiction. Accordingly, we

ORDER this appeal DISMISSED.²


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Crystal Eller, District Judge
James A. Kohl, Settlement Judge
McLetchie Law
Christiansen Trial Lawyers
Eighth District Court Clerk

²In light of this order, appellant's motion for stay without bond is denied as moot.