

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA NEVADA,
Appellant,
vs.
JOSEPH BOURDEAU,
Respondent.

No. 38449

FILED

AUG 14 2002

ORDER DISMISSING APPEAL

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

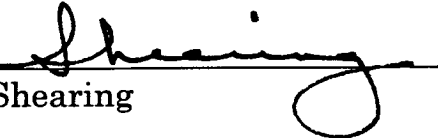
On September 25, 2001, respondent filed a motion to dismiss this appeal. In support of the motion, respondent contends that the notice of appeal was filed prematurely. Specifically, respondent contends the notice of appeal was filed prior to the resolution of appellant's "Motion for a New Trial pursuant to NRCP 59(a)." On October 2, 2001, appellant filed a response to the motion. In the response, appellant concedes that the district court has not ruled on its tolling motion. Appellant represents, however, that due to "an abundance of caution" the notice of appeal was filed prior to the resolution of its tolling motion.

Our review of the district court order entered on August 6, 2001, reveals that appellant's motion pursuant to NRCP 59(a) is "held in abeyance." Pursuant to NRAP 4(a)(2), a notice of appeal filed before the formal disposition of a pending tolling motion "shall have no effect." We conclude the notice of appeal is of no effect because it was filed prior to the

district court's formal disposition of appellant's tolling motion. Accordingly, we grant respondent's motion, and we dismiss this appeal.

It is so ORDERED.


_____, J.
Young


_____, J.
Shearing


_____, J.
Agosti

cc: Hon. Connie J. Steinheimer, District Judge
Hale Lane Peek Dennison Howard & Anderson/Las Vegas
Hale Lane Peek Dennison Howard & Anderson/Reno
Mirch & Mirch
Washoe District Court Clerk