

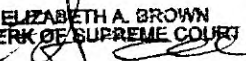
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL THOMAS MARTINELLI,
Appellant,
vs.
MICHELLE LUCERO DEL REAL,
Respondent.

No. 88491

FILED

MAY 07 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court's findings of fact, conclusions of law, and order in a visitation matter. Eighth Judicial District Court, Family Division, Clark County; Stephanie Charter, Judge.


Review of the notice of appeal and documents before this court reveals a jurisdictional defect. Specifically, following entry of the challenged order, appellant filed a motion to set it aside. And when such a motion is filed within the time set forth in NRCP 59(e) and requests a substantive change to the order being challenged, the motion to set aside tolls the time for filing a notice of appeal. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (recognizing that courts generally treat certain post-judgment motions, including requests to reconsider or set aside a decision, as tolling motions so long as the motion is timely filed and seeks a substantive change in the challenged order, and applying that rule in the context of a motion for reconsideration); *see also* NRAP 4(a)(4)(C) (explaining that an NRCP 59(e) motion tolls the time for filing a notice of appeal).

Here, the district court docket demonstrates that no written order resolving the motion to set aside has been entered. Under these circumstances, appellant's notice of appeal is premature, and thus, it does not divest the district court of jurisdiction or vest jurisdiction in this court. *See* NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction."). Accordingly, because we lack jurisdiction over this appeal, we

ORDER this appeal DISMISSED.¹


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Stephanie Charter, District Judge, Family Division
Michael Thomas Martinelli
Kainen Law Group
Legal Aid Center of Southern Nevada, Inc.
Eighth District Court Clerk

¹Appellant may file a new notice of appeal once the district court enters a written order finally resolving the motion to set aside, if deemed appropriate.