IN THE SUPREME COURT OF THE STATE OF NEVADA

HARTFORD FIRE INSURANCE COMPANY,
Appellant,
vs.
CONTRACT MANUFACTURING INDUSTRIES, INC.,
Respondent.

No. 43913

FILED

DEC 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This appeal is from a district court order denying a "motion for reconsideration" of a default judgment in a remanded breach of contract action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. Currently at issue is respondent's November 18, 2004 motion to dismiss this appeal as untimely.

On May 14, 2004, the district court, on remand, entered an order determining that the striking of appellant's pleadings was an appropriate sanction and a separate default judgment in favor of respondent. Written notice of the May 14 order's and judgment's entry was acknowledged on May 17, 2004. Thereafter, on May 24, 2004, appellant filed a "motion for reconsideration of order." Later, on June 17, 2004, appellant filed an "errata" to the reconsideration order, which purported "to correctly title Motion as Motion to Amend Findings of Fact and Conclusions of Law." Without mentioning the errata, the district court denied the "motion for reconsideration" on September 2, 2004; the order's notice of entry was served that same day.

Appellant filed its notice of appeal on September 7, 2004. In it, appellant purports to appeal from the September 2 order denying its "motion to amend findings of fact, conclusions of law." Appellant further

explains that the order was "incorrectly titled," as was the "motion for reconsideration." Respondent has filed a motion urging this court to dismiss this appeal, as no appeal may be taken from an order denying a motion for reconsideration and, since a motion for reconsideration does not toll the appeal period, this appeal is untimely with respect to the final judgment.[1] Appellant opposes dismissal, claiming that the appeal should be construed as from the final judgment,[2] and that the May 24 motion "to amend" properly tolled the appeal period.[3]

Under NRAP 4(a), a notice of appeal must be filed no later than thirty days after written notice of an order's entry is served. An untimely notice of appeal fails to vest jurisdiction in this court.[4] However, a timely-filed motion to amend under NRCP 52 or NRCP 59 tolls the appeal period.[5] Motions for reconsideration, on the other hand, do not toll the appeal period.[6]

Even if an appeal is timely filed, however, this court has jurisdiction to consider an appeal only when the appeal is authorized by

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[1]See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

[2]See Ross v. Giacomo, 97 Nev. 550, 635 P.2d 298 (1981).

[3]See NRAP 4(a)(2)(ii).

[4]Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

[5]NRAP 4(a)(2)(ii).

[6]Alvis, 99 Nev. 184, 660 P.2d 980.

statute or court rule.[7] Although there is no statute or rule authorizing an appeal from orders denying motions for reconsideration or to amend,[8] this court has previously construed notices of appeal from orders denying timely-filed tolling motions as from the appealable final judgment.[9]

In this instance, appellant's notice of appeal from the order denying its motion is technically deficient, because it purports to appeal from a non-appealable order. Assuming, however, that the appeal should be construed as from the underlying final judgment in the matter, it was filed more than thirty days after the final judgment's entry was served on May 17, 2004. Therefore, this appeal is timely only if appellant's May 24 motion effectively tolled the appeal period.

The May 24 "motion for reconsideration" was filed within ten days of the date that written notice of the judgment's entry was served; however, a motion for reconsideration does not toll the appeal period. Further, although appellant filed an "errata" in an attempt to "correct" the motion's title, the errata was untimely filed outside of NRCP 52 and NRCP 59's ten-day time limit, and thus ineffective to toll the appeal period. Although appellant asserts that the May 24 motion should be considered a tolling motion to amend under NRCP 52, the motion makes no mention of NRCP 52 or NRCP 59, or of the word "alter" or "amend." Moreover, the district court order expressly denied appellant's "motion for

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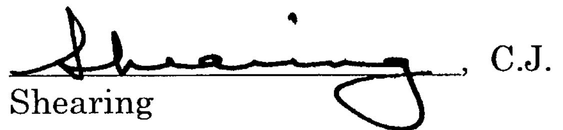
[7]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

[8]NRAP 3A(b)(2); Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995); Alvis, 99 Nev. 184, 660 P.2d 980.

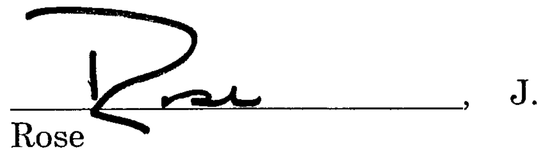
[9]See NRAP 3A(b)(1); Ross, 97 Nev. 550, 635 P.2d 298.

reconsideration," not a motion to amend.[10] Accordingly, appellant's motion was ineffective to toll the appeal period, and any appeal from the underlying final judgment is untimely. Accordingly, we grant respondent's motion, and we dismiss this appeal for lack of jurisdiction.

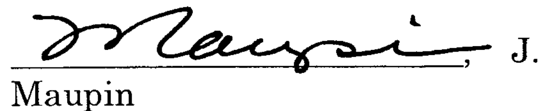
It is so ORDERED.



Shearing, C.J.



Rose, J.



Maupin, J.

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[10]See Alvis, 99 Nev. at 186 n.1, 660 P.2d at 981 n.1 (noting that a motion for rehearing that merely seeks reconsideration of an earlier order cannot be construed as a tolling motion to alter or amend the judgment under NRCP 59). Despite the note in Alvis, appellant contends that this court "has not addressed the specific situation, but both federal and state courts . . . have treated motions for reconsideration of findings of fact and conclusions of law . . . as tolling motions to amend." In support of its argument, appellant cites Matter of Marriage of Hansen, 858 P.2d 1240 (Kan. Ct. App. 1993); Obray v. Mitchell, 567 P.2d 1284 (Idaho 1977); Richardson v. Kennedy, 475 S.E.2d 418 (W. Va. 1996); In re Captain Blythers, Inc., 311 B.R. 530 (9th Cir. BAP 2004). However, in Alvis, this court rejected a similar argument. In view of Alvis, appellant's argument in this case likewise fails.

cc: Hon. Kenneth C. Cory, District Judge
Jerry J. Kaufman, Settlement Judge
Parker Nelson & Arin, Chtd.
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk