

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAUREN MASTERS,
Appellant,
vs.
GLEN J. LERNER AND ASSOCIATES,
A CORPORATION AND A KNOWN
BUSINESS ENTITY,
Respondent.

No. 44053

FILED

JAN 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
RECEIVED BY C. FRK

ORDER DISMISSING APPEAL

This proper person appeal is taken from a judgment entered after a bench trial in an action concerning legal malpractice and conversion. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On June 2, 2004, the district court entered a decision and judgment in favor of respondent. Notice of the judgment's entry was served by mail on July 13, 2004. On July 27, 2004, appellant filed a motion for a new trial, for a judgment notwithstanding the verdict, or for reconsideration. The district court denied appellant's post-judgment motion on September 3, 2004. Appellant filed a notice of appeal on October 4, 2004.

Our review of the documents transmitted pursuant to NRAP 3(e) reveals a jurisdictional defect. Specifically, appellant's post-judgment motion was untimely, and therefore, failed to toll the time in which to appeal. NRAP 4(a)(2) provides that the time for filing a notice of appeal is terminated by a timely motion filed in the district court under NRCP 50(b) or NRCP 59. A post-judgment motion is due no later than ten days after

written notice of the judgment's entry was served.¹ If service is accomplished by mail, three days are added to the prescribed period.² Here, notice of the judgment's entry was served by mail on July 13, 2004. Appellant's post-judgment motion was due thirteen days later, on July 26, 2004. Consequently, appellant's July 27, 2004 motion was filed one day late, and failed to toll the time for appealing. Because appellant's October 4, 2004 notice of appeal was filed more than two months after notice of the judgment's entry was served, it was untimely and we lack jurisdiction over this appeal. We therefore dismiss it.

It is so ORDERED.³

Becker _____, C.J.
Becker

Rose _____, J.
Rose

Hardesty _____, J.
Hardesty

¹See NRCP 59(b); NRCP 50; see also Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (holding that a motion for reconsideration does not toll the time to appeal the judgment); Ross v. Giacomo, 97 Nev. 550, 635 P.2d 298 (1981) (providing that tolling motions must be filed within ten days after written notice of the judgment's entry is served, and untimely tolling motions will not toll the thirty-day notice of appeal period).

²See NRCP 6(e).

³Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant. On October 18, 2004, appellant submitted a copy of the district court's June 24, 2004 order granting her request to proceed in forma pauperis. Accordingly, no supreme court filing fee is due.

cc: Hon. Valerie Adair, District Judge
Lauren Masters
Benson, Bertoldo, Baker & Carter, Chtd.
Clark County Clerk