

IN THE SUPREME COURT OF THE STATE OF NEVADA


BARBARO GRASS,
Appellant,
vs.

No. 49019

THE SMALL CLAIMS COURT OF
LAKE TOWNSHIP, IN AND FOR THE
COUNTY OF PERSHING; THE
HONORABLE CAROL A. NELSEN,
JUSTICE OF THE PEACE; AND GINA
GARCIA, DEPUTY CLERK,
Respondents.

FILED

JUN 29 2007

BY  JOLLETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order denying a motion for reconsideration of its prior order dismissing a writ petition that challenged the district court's refusal to allow an appeal from a small claims action for conversion. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Our review of the documents before us reveals jurisdictional defects. First, the order designated in appellant's notice of appeal is not substantively appealable. The right to appeal is statutory; if no statute or court rule provides for an appeal, no right to appeal exists.¹ The order challenged in this case denied appellant's motion, styled "motion to vacate." As in that motion, appellant claimed that the district court "erroneously denied [his] Petition for Writ of Mandamus," sought to

¹Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975).

“revisit the contentions set forth in the Writ,” and did not refer to NRCP 60(b) or raise grounds for NRCP 60(b) relief, the motion essentially asked the district court to reconsider its prior order dismissing appellant’s writ petition.² The district court declined to do so, but the denial of a motion for reconsideration is not substantively appealable.³

Second, even if we construe the appeal to be from the district court’s August 2, 2006 order dismissing appellant’s writ petition, the notice of appeal was untimely. The dismissal order was the final order in this case, as it disposed of all issues in appellant’s writ petition and left nothing for the future consideration of the district court.⁴ Notice of entry of the dismissal order was served by mail on August 2, 2006. And as appellant’s motion for reconsideration did not toll the appeal period,⁵ any

²NRCP 60(b) allows for relief from a judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied or a prior judgment has been reversed. Appellant alleged that the district court “erroneously denied” his writ petition, but alleged no mistake, inadvertence, surprise or excusable neglect on his part and no other grounds for NRCP 60(b) relief.

³See NRAP 3A(b); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

⁴Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2006).

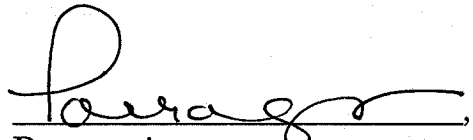
⁵NRAP 4(a)(4); Matter of Application of Duong, 118 Nev. 920, 59 P.3d 1210 (2002).

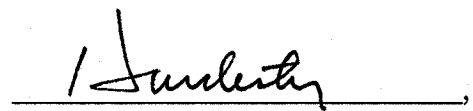
Even if it could be construed as a motion to alter or amend or for a new trial, the motion for reconsideration was filed more than ten days after service of written notice of the final order’s entry, and thus did not


continued on next page . . .

notice of appeal from the August 2 order must have been filed within thirty-three days of its notice of entry. Here, appellant's notice of appeal was not filed until February 23, 2007, well beyond the thirty-three day period.⁶ Accordingly, as we lack jurisdiction, we

ORDER this appeal DISMISSED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Richard Wagner, District Judge
Barbaro Grass
Pershing County District Attorney
Pershing County Clerk

... continued

toll the appeal period. See NRAP 4(a)(4); NRCP 52(b); NRCP 59(b) and (d).

⁶NRAP 4(a)(1); NRAP 26(c).