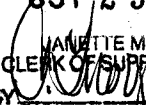


IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCESCA NAYLOR,  
Appellant,  
vs.  
ROBERT ENEWOLD AND DIANE  
ENEWOLD,  
Respondents.

No. 49058

**FILED**

OCT 25 2007  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion for reconsideration of an order striking a request for a trial de novo. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Respondents have filed a motion to dismiss this appeal for lack of jurisdiction based on two arguments. First, respondents argue that the order identified in the notice of appeal, which denied a motion for reconsideration, is not an appealable order. Second, respondents argue that to the extent that appellant intended to appeal from the district court's order striking appellant's request for a trial de novo, the notice of appeal was not timely filed because appellant's motion for reconsideration was not a tolling motion under NRAP 4(a)(4). Appellant opposes the motion, arguing that respondents are barred from raising the issue of whether the motion for reconsideration was a tolling motion because they did not cross-appeal.<sup>1</sup>

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<sup>1</sup>We note that appellant's opposition to the motion to dismiss was not timely filed. See NRAP 27(a) (providing that opposition to a motion  
*continued on next page . . .*

Based on our review of the motion, opposition, and the documents submitted to this court pursuant to NRAP 3(e), we conclude that both of respondents' arguments have merit. First, this court has held that an order denying a motion for reconsideration is not an independently appealable order.<sup>2</sup> As a result, appellant cannot appeal from that order, and respondents were not required to cross-appeal in order to argue that appellant's motion for reconsideration was not a tolling motion. Second, to the extent that appellant intended to appeal from the district court's order denying her request for a trial de novo, which is an appealable order,<sup>3</sup> the notice of appeal was not timely filed in the district court. Appellant did not file the notice of appeal until March 2, 2007, more than 30 days after appellant was served on November 3, 2006, with written notice of the

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*... continued*


must be filed within 7 days after service of the motion); NRAP 26(c) (providing for additional 3 days when service is by mail); NRAP 25(1)(a) (providing that document filed in supreme court is timely if it is mailed to the clerk on or before the last day for filing). Nonetheless, we have considered the arguments raised in the opposition.

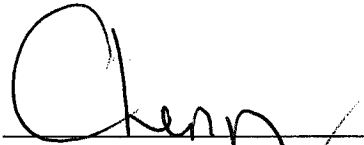
<sup>2</sup>Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983); see also NRAP 3A(b).


<sup>3</sup>See NRAP 3A(b)(1) (providing for an appeal from a final judgment or order); Gittings v. Hartz, 116 Nev. 386, 391, 96 P.2d 898, 901(2000) ("When a district court strikes a request for a trial de novo, the decision is treated for purposes of jurisdiction as a final order, subject to appellate review."). After this action was commenced in the district court, this court amended the Nevada Arbitration Rules to specifically provide that an order striking a request for a trial de novo is appealable as a final judgment in a civil action. NAR 18(F) (as amended effective January 1, 2005).

order's entry.<sup>4</sup> And appellant's motion for reconsideration is not a tolling motion.<sup>5</sup> For these two reasons, we conclude that we lack jurisdiction over this appeal.<sup>6</sup> Accordingly, we grant respondents' motion and

ORDER this appeal DISMISSED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Jerome Polaha, District Judge  
Carolyn Worrell, Settlement Judge  
Lawrence L. Lozensky  
Law Offices of Robert F. Enzenberger  
Washoe District Court Clerk

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<sup>4</sup>NRAP 4(a)(1) (providing that notice of appeal must be filed no later than 30 days after service of notice of entry of the appealable order or judgment); NRAP 26(c) (providing for additional 3 days if service is by mail).

<sup>5</sup>See NRAP 4(a)(4) (listing motions that toll time to appeal in civil actions); Alvis, 99 Nev. at 186 & n.1, 660 P.2d at 980 & n.1 (reiterating rule that motion for rehearing is not a tolling motion and concluding that motion for rehearing filed in that case could not "reasonably be construed as a motion to alter or amend the judgment pursuant to NRCP 59(e)").

<sup>6</sup>Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that this court only has jurisdiction over appeals authorized by statute or court rule); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (stating that an untimely notice of appeal fails to vest jurisdiction in this court).

<sup>7</sup>We deny appellant's motion to strike portions of the motion to dismiss.