IN THE SUPREME COURT OF THE STATE OF NEVADA

NOTHING BUT SILVER, INC.,
Appellant,
vs.
SMI ARCHITECTURAL MILLWORK, INC.,
Respondent.

No. 49315

FILED

SEP 20 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. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect. Specifically, it appeared that the judgment or order designated in the notice of appeal is not substantively appealable as no statute or rule authorizes an appeal from an order denying a motion for reconsideration.[1] Accordingly, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to that order, appellant argues that the order denying reconsideration is appealable as a final order under NRAP 3A(b)(1) or as a special order after final judgment under NRAP 3A(b)(2).

[1]See NRAP 3A(b); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (holding that order denying rehearing is not appealable as a special order after final judgment under NRAP 3A(b)(2)).

Respondent has filed a reply arguing that the order is not appealable. We agree with respondent.

First, the order denying reconsideration is not appealable as a final order under NRAP 3A(b)(1). This court has explained that a final order for purposes of that rule is one that disposes of all the issues presented in the case, and leaves nothing for future consideration of the court, except certain post-judgment matters.[2] Based on that definition, the final order or judgment in this case was the judgment entered against appellant on June 30, 2005.[3] The order denying reconsideration was thus a post-judgment order; it was not a separate final judgment for purposes of NRAP 3A(b)(1).

Second, the order denying reconsideration is not appealable as a special order after final judgment under NRAP 3A(b)(2). This court has held that orders denying rehearing or reconsideration are not independently appealable.[4] And we reject appellant's attempts to distinguish the order in this case. The order did not alter or affect the

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[2]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

[3]We acknowledge that the district court entered an amended judgment on January 25, 2006. But the amended judgment merely added the attorney fees and costs that had been granted to respondent in an order entered on January 10, 2006. The January 10, 2006, order awarding attorney fees and costs was appealable as a special order after final judgment. See NRAP 3A(b)(2); Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). It appears that appellant was served with notice of that order's entry on January 13, 2006, and that appellant never filed a notice of appeal from that order.

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

rights of a party arising out of the final judgment;[5] rather, it left the final judgment intact. As such, the order denying reconsideration is not a special order after final judgment.

In response to the order to show cause, appellant also suggests that it would be inequitable to dismiss this appeal because the district court's decision to deny appellant's motion for relief from the judgment under NRCP 60(b) was erroneous. We conclude that this argument cannot save this appeal. To the extent that appellant is attempting to challenge the order denying its motion to set aside the judgment under NRCP 60(b), the notice of appeal was not timely filed.

This court has indicated that an order denying a motion for relief under NRCP 60(b) is appealable as a special order after final judgment.[6] Appellant suggests that the district court's order denying appellant's motion for NRCP 60(b) relief was ineffective because it did not include findings of fact and conclusions of law and therefore appellant had to "exhaust" its remedies in district court by seeking reconsideration before appealing the order to this court. Appellant relies on Schoepe v. Pacific Silver Corp.[7] We conclude that appellant's reliance on Schoepe is misplaced. In that case, this court explained that while an order ruling on a motion is not subject to the requirement in NRCP 52(a) of findings of facts and conclusions of law, such an order must still be supported by the

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[5]See Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) (defining "special order after final judgment" for purposes of NRAP 3A(b)(2)).

[6]See Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987).

[7]109 Nev. 941, 860 P.2d 166 (1993).

record in order for this court to affirm the order on appeal.[8] We concluded that the district court erred in that case by failing to explain its rationale for formulating the rental value that it placed on mining property at issue in the case when the court did not indicate in its order or in the record how it determined the rental value and did not use any of the methods suggested by the parties.[9] We did not, however, hold that the order was not appealable because it lacked sufficient support in the record.

If appellant wanted to pursue an appeal from the order denying the motion for relief under NRCP 60(b), it had to timely file a notice of appeal designating that order within 30 days after service of notice of the order's entry.[10] Here, appellant was served with notice of entry of the order denying the motion for relief under NRCP 60(b) on October 9, 2006. The notice of appeal was not filed in the district court until April 17, 2007, after the 30-day appeal period had expired. And the motion for reconsideration did not toll the time to file the notice of appeal.[11]

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[8]Id. at 943, 860 P.2d at 168.

[9]Id. at 943-44, 860 P.2d at 168.

[10]NRAP 4(a)(1); see also NRAP 26(c) (adding 3 days when service is by mail).

[11]NRAP 4(a)(4); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983).

For the reasons stated in this order, we conclude that we lack jurisdiction over this appeal.[12] Accordingly, we

ORDER this appeal DISMISSED.[13]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Janet Trost, Settlement Judge
Christina A. DiEdoardo
Pezzillo Robinson
Eric Dobberstein & Associates
Eighth District Court Clerk

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[12]See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (stating that this court lacks jurisdiction over an untimely appeal).

[13]Respondent has requested an award of attorney fees and costs for having to respond to this appeal. We decline to award attorney fees as costs under NRAP 38. If respondent seeks costs under NRAP 39, it must follow the procedures provided in that rule.