

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY NIEMI, INDIVIDUALLY,
Appellant,
vs.
JASON BOWEN, D.P.M., AND
EASTERN PODIATRY, LLC,
Respondents.

No. 53937

FILED

OCT 20 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying reconsideration of an order dismissing a medical malpractice action for failure to file an NRS 41A.071 expert affidavit. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

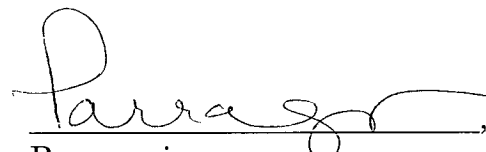
Respondents have moved to dismiss this appeal, asserting that it was taken from a nonappealable order and that it is untimely as to the appealable final order. Appellant opposes the motion, arguing that respondents' motion is an improper second attempt at dismissing this appeal and that because respondents filed their district court motion to dismiss several months after the complaint was filed, waiver and estoppel principals bar them from "continuing to pursue the issue now."¹

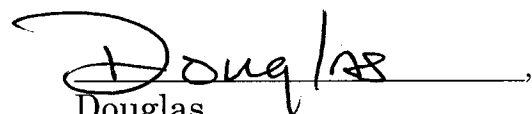
An order denying reconsideration is not independently appealable, and a motion for reconsideration does not toll the appeal period. NRAP 3A(b); NRAP 4(a)(4); EDCR 2.24(b); Arnold v. Kip, 123 Nev.

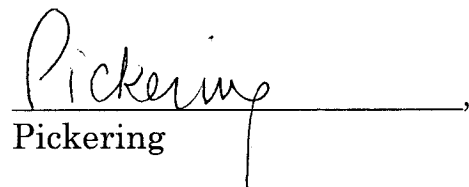
¹We direct the clerk of this court to strike respondents' reply to appellant's opposition, as respondents' did not seek or obtain leave to file the reply. NRAP 27(a).

410, 417, 168 P.3d 1050, 1054 (2007); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983). And appellant's June 1, 2009, notice of appeal is untimely as to the district court's final order dismissing the action, notice of entry of which was served by mail on February 25, 2009. NRAP 4(a); NRAP 26(c). Further, this court's June 24, 2009, order denying respondents' first motion to dismiss was expressly entered without prejudice to their right to renew the motion upon completion of the settlement proceedings, and appellant's waiver and estoppel arguments go to the merits of the appeal and fail to demonstrate this court's jurisdiction. Accordingly, as we lack jurisdiction, we

ORDER this appeal DISMISSED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
William F. Buchanan, Settlement Judge
Porter & Terry, LLC
Mandelbaum, Schwarz, Ellerton & McBride
Nall & Miller, LLP
Eighth District Court Clerk