

IN THE SUPREME COURT OF THE STATE OF NEVADA

JORJA MOSLEY,
Appellant,
vs.
IRWIN H. KLEIN, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF DARROL STROUD MOSLEY,
Respondent.

No. 58312

FILED

NOV 14 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malou
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. O'Malley, Judge.

Our review of this appeal revealed a jurisdictional defect. After the district court entered the divorce decree, appellant timely filed a motion for a new trial under NRCP 59. Before the district court ruled on that motion, appellant filed a notice of appeal and the district court vacated the hearing on the new trial motion because of the pending appeal.

A premature notice of appeal filed before the resolution of a timely tolling motion does not divest the district court of jurisdiction. See NRAP 4(a)(6). The notice of appeal will be considered filed on the date of and after entry of the written disposition of a timely tolling motion. *Id.* Because appellant timely filed a motion for a new trial, the district court was not divested of jurisdiction to rule on the motion by the filing of appellant's premature notice of appeal. See NRAP 4(a)(6). Thus, it appeared that appellant's appeal was premature and we lacked

jurisdiction to consider it. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1381-82 (1987) (providing that a premature notice of appeal does not vest jurisdiction in this court).

Accordingly, we directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction and noted that appellant could cure the jurisdictional defect by obtaining from the district court a written, signed, and file-stamped order resolving the new trial motion and submitting a copy of that order to this court. We cautioned appellant that failure to comply with our directive and obtain a written district court order that finally resolves appellant's new trial motion within 30 days would result in the dismissal of this appeal for lack of jurisdiction.

In response to this court's order, appellant requests that this court hold this appeal in abeyance pending the district court's resolution of her new trial motion. Although we deny that request, the dismissal of this appeal is without prejudice to appellant's right to appeal once the new trial motion is resolved, if she is still aggrieved.

Accordingly, as we lack jurisdiction, we
ORDER this appeal DISMISSED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Gloria S. O'Malley, District Judge, Family Court Division
Eighth Judicial District Court Chief Judge, District Judge
Jorja Mosley
Irwin H. Klein
Eighth District Court Clerk