

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STACEY MIDBY-WEISS,
Appellant,
vs.
MICHAEL BRIAN WEISS,
Respondent.

No. 65351

FILED

AUG 06 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Appellant filed the notice of appeal in this matter, which purports to challenge the "final judgment" in the underlying divorce action, in district court on March 26, 2014. While a decree of divorce had not yet been entered at the time the notice of appeal was filed, the district court ultimately entered the decree on May 19, 2014.

While this appeal was still pending before the Nevada Supreme Court, appellant filed various motions in the district court, including a motion to set aside the divorce decree filed on November 10, 2014, and a motion for reconsideration that was filed on January 9, 2015. Thereafter, an order was entered transferring this appeal to the Nevada Court of Appeals on March 3, 2015.

On that same day, appellant filed another notice of appeal in the district court, which was docketed in the Nevada Supreme Court under Docket No. 67528. That appeal, however, was ultimately dismissed

for lack of jurisdiction by the Nevada Supreme Court on May 13, 2015. *See Midby-Weiss v. Weiss*, Docket No. 67528 (Order Dismissing Appeal, May 13, 2015). In dismissing the appeal in Docket No. 67528, the court stated that it appeared that a final judgment had not been entered in the underlying case because a written order resolving appellant's motion to set aside the divorce decree had seemingly not been entered.¹ *Id.* The court further held that, even if a final judgment had been entered, any appeal from that judgment was premature because appellant had filed a motion for reconsideration that remained pending in the district court at the time the appeal was dismissed.² *Id.* (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (recognizing that timely filed motions for reconsideration may toll the appeal period)).

Here, appellant challenges the May 19, 2014, decree of divorce, which appears to resolve all claims pending in the underlying divorce action, and thus, would seem to constitute the final judgment in the underlying case. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 418 (2000) (“[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and

¹Although the order of dismissal in Docket No. 67528 suggested, without certainty, that appellant’s motion to set aside may remain pending below, we note that this motion was denied by the district court’s December 30, 2014, “Order from the Hearing of December 3, 2014,” which was included in the record on appeal transmitted to this court by the Eighth Judicial District Court.

²Appellant did not seek rehearing of the Nevada Supreme Court’s order dismissing the appeal in Docket No. 67528.

costs.”). While the notice of appeal in this case was filed before the decree of divorce was entered, under NRAP 4(a)(6), when a district court enters a final written order before an otherwise premature notice of appeal is dismissed, “the notice of appeal shall be considered filed on the date of and after entry of the order.”

Based on NRAP 4(a)(6), jurisdiction over this appeal would generally seem to have vested in Nevada’s appellate courts upon the filing of the May 19, 2014, divorce decree. And if jurisdiction over the appeal became proper upon entry of the divorce decree, the November 10, 2014, motion to set aside and the January 9, 2015, motion for reconsideration would not have affected our jurisdiction over this appeal. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (“[A] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in [the appellate] court.”).

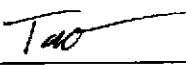
Our examination of the jurisdictional issues presented by this appeal, however, is necessarily controlled by the Nevada Supreme Court’s order of dismissal in Docket No. 67528. *See Hsu v. Cnty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (stating that a higher court’s statement of “a principle or rule of law necessary to a decision” becomes the “law of the case” and must be followed by lower courts in subsequent proceedings). Here, the district court’s December 30, 2014, “Order from the Hearing of December 3, 2014,” resolved appellant’s motion to set aside. But the Nevada Supreme Court’s order of dismissal in Docket No. 67528 also held that, if a final judgment had been entered in the underlying case, any appeal from that judgment would have been premature because appellant’s January 9, 2015, motion for reconsideration remained pending

below. See *Midby-Weiss*, Docket No. 67528 (Order Dismissing Appeal, May 13, 2015). And our review of the district court docket entries reveals that the district court has not yet entered a written, file-stamped order resolving that motion for reconsideration.

Thus, based on the Nevada Supreme Court's order of dismissal in Docket No. 67528, we must determine that this appeal was prematurely filed and that we lack jurisdiction to consider it. Once the district court enters a written, file-stamped order resolving appellant's motion for reconsideration, however, any aggrieved party may appeal from the district court's May 19, 2014, decree of divorce and any other appealable post-decree orders. Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Stacey Midby-Weiss
Michael Brian Weiss
Eighth District Court Clerk