

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHY CARLENE STEELE,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE AS SUCCESSOR BY
MERGER TO LASALLE BANK
NATIONAL ASSOCIATION AS
TRUSTEE FOR EMC MORTGAGE
LOAN TRUST 2005-A, MORTGAGE
LOAN PASS-THROUGH
CERTIFICATES, SERIES 2005-A,
Respondent.

No. 67241

FILED

JUL 20 2015

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

ORDER DISMISSING APPEAL

This is an appeal from a district court summary judgment in a foreclosure action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


The district court entered an order granting summary judgment in respondent's favor in the underlying action on December 18, 2014. On January 6, 2015, appellant filed a timely motion for reconsideration of that order. Appellant subsequently filed a notice of appeal from the summary judgment order and, on January 27, 2015, the district court entered an order concluding it was divested of jurisdiction to consider the motion for reconsideration based on the filing of the notice of appeal. As a result, the motion for reconsideration remains pending in the underlying action.

In *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010), the Nevada Supreme Court held that a timely post-judgment motion for reconsideration seeking a substantive change to the judgment qualifies as a tolling motion under NRCP 59 and NRAP

4(a)(4). Here, because appellant's motion for reconsideration sought to substantively alter the district court's summary judgment order, it qualified as an NRCP 59 tolling motion, rendering the district court's conclusion that it lacked jurisdiction to consider the motion erroneous, *see* NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction."), and this appeal premature. Accordingly, we lack jurisdiction to consider this appeal,¹ and we therefore order the appeal dismissed.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹Based on our review of the documents before us, it is also not clear that the summary judgment order challenged in this appeal constitutes a final, appealable judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (providing that a final judgment resolves all claims as to all parties). Notably, while a stipulation regarding respondent's claims against the Internal Revenue Service was filed in the district court on February 25, 2014, it does not appear that the district court has entered an order resolving these claims. Thus, to the extent that these claims remain pending below, the district court will need to enter a written, file-stamped order resolving them before an appeal may be taken pursuant to NRAP 3A(b)(1) (providing for an appeal from the final judgment in an action or proceeding).

²In light of this order, we deny as moot all requests for relief currently pending in this appeal. Accordingly, the clerk of the court shall return, unfiled, the reply in support of respondent's motion for remand, which was provisionally received in this court on June 8, 2015.

cc: Hon. Janet J. Berry, District Judge
Kathy Carlene Steele
Holland & Hart LLP/Las Vegas
Washoe District Court Clerk