


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY JAMES BENNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67592

FILED

JUN 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition for a writ of mandamus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

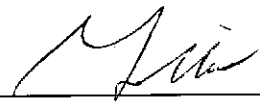
Our review of the documents before us on appeal reveals a jurisdictional defect, as the notice of appeal was prematurely filed. In the underlying action, the district court's order denying mandamus relief was entered on February 11, 2015. On February 25, 2015, appellant filed a motion seeking reconsideration of the order denying mandamus relief. Because this motion sought a substantive change to that order, it qualified as a tolling motion under NRCP 59.¹ See NRAP 4(a)(4)(C) (explaining that an NRCP 59 motion to alter or amend the judgment tolls the time for filing a notice of appeal); *AA Primo Builders, LLC v. Washington*, 126 Nev.

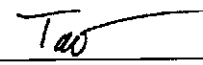
¹To be a tolling motion, the motion for reconsideration was also required to be filed within ten days of service of notice of entry of the district court's order. See NRCP 59(e) ("A motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment."). Here, no notice of entry of the order denying mandamus relief appears in the district court record, and thus, the timeliness of appellant's motion for reconsideration is not at issue.


578, 582, 245 P.3d 1190, 1192-93 (2010) (recognizing that a timely post-judgment motion for reconsideration that seeks a substantive change to the judgment qualifies as a tolling motion under NRCP 59 and NRAP 4(a)(4)). To date, however, the motion for reconsideration has not been resolved by the district court.

Under these circumstances, appellant's notice of appeal was premature, and thus, did not divest the district court of jurisdiction or vest jurisdiction in us on appeal. See NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction."). Accordingly, because we lack jurisdiction over this appeal, we order it dismissed.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
Gregory James Bennett
Washoe County District Attorney
Washoe District Court Clerk