


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK M. PECK,  
Appellant,  
vs.  
MARY LOU WILSON,  
Respondent.

No. 67902

**FILED**

SEP 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from a district court order dismissing a civil rights complaint. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Our preliminary review of the documents submitted to this court pursuant to NRAP 3(g) reveals a jurisdictional defect. Specifically, it appears that, following the entry of the district court's order granting respondent's motion to dismiss, appellant filed a timely<sup>1</sup> motion seeking reconsideration of that decision, which sought a substantive change to the order of dismissal. Thus, the motion for reconsideration qualified as a tolling motion under NRCP 59. See NRAP 4(a)(4)(C) (explaining that an

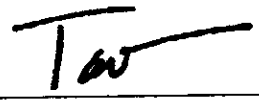
---


<sup>1</sup>The record demonstrates that respondent never served appellant with a notice of entry of order for the district court's order dismissing appellant's complaint, and thus, the time within which appellant was required to file any tolling motion never began to run. See NRCP 59(e) (providing that the ten-day period for filing a motion to alter or amend the judgment runs from service of written notice of entry of that judgment); *In re Duong*, 118 Nev. 920, 922-23, 59 P.3d 1210, 1212 (2002) (noting that the service of a formal notice of entry is required in order to commence the running of the time for filing a notice of appeal).

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. 578, 581-82, 245 P.3d 1190, 1192-93 (2010) (recognizing that a timely-filed post judgment motion for reconsideration that seeks a substantive change to the challenged order qualifies as a tolling motion under NRCP 59 and NRAP 4(a)(4)). To date, however, it does not appear that the motion for reconsideration has 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 this court 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 necessarily

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Scott N. Freeman, District Judge  
Frank M. Peck  
Mary Lou Wilson  
Washoe District Court Clerk