

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY LOUIS CARTER,  
Appellant,  
vs.  
SHIRLEY D. LINDSEY, ESQ.; AND  
THE STATE OF NEVADA,  
DEPARTMENT OF ADMINISTRATION,  
HEARING DIVISION, APPEALS  
OFFICER,  
Respondents.

No. 66936

**FILED**

DEC 29 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *AM/leap*  
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from a district court order denying a petition for a writ of mandamus in a workers' compensation matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Following the entry of the order denying the underlying writ petition, appellant filed a timely NRCP 52(b) motion to amend that order. Before that motion could be addressed, however, appellant filed a notice of appeal from the denial of his writ petition. Thereafter, the district court entered an order purporting to deny his NRCP 52(b) motion on the basis that it lacked jurisdiction due to the filing of the notice of appeal.

NRAP 4(a)(4)(B) provides that the timely filing of an NRCP 52(b) motion tolls the time for filing a notice of appeal. And here, because appellant filed his notice of appeal before the district court had entered a written, file stamped order resolving his NRCP 52(b) motion, appellant's notice of appeal was prematurely filed and did not divest the district court of jurisdiction over the underlying case. See NRAP 4(a)(6)

(providing that “[a] premature notice of appeal does not divest the district court of jurisdiction”). Thus, contrary to what the district court concluded, jurisdiction over the underlying case remained vested in the district court when appellant’s NRCP 52(b) motion came before it, such that the motion should have been resolved on the merits.

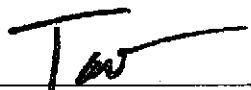
By failing to address the merits of appellant’s NRCP 52(b) motion when that motion was properly before it, what the district court actually did was decline to consider that motion based on its erroneous determination that it had been divested of jurisdiction. Our supreme court has consistently held that, in making jurisdictional determinations, Nevada appellate courts should evaluate district court orders based on what those orders substantively accomplish, rather than based on the labels used in those orders. *See, e.g., Lee v. GNLV Corp.*, 116 Nev. 424, 427, 996 P.2d 416, 418 (2000). In line with this precedent and given that the district court purported to deny the motion on improper grounds without addressing the motion’s merits, we conclude that the interests of justice will be best served by construing the district court’s order as one declining to consider, rather than denying, appellant’s NRCP 52(b) motion.

Under these circumstances, the NRCP 52(b) motion remains pending below, which necessarily renders appellant’s notice of appeal prematurely filed. *See* NRAP 4(a)(4)(B) (providing that a timely NRCP 52(b) motion tolls the time for filing a notice of appeal). Accordingly, we conclude that we lack jurisdiction over appellant’s premature appeal, and we therefore order that appeal dismissed. Once the district court enters an order that actually resolves appellant’s

NRCP 52(b) motion,<sup>1</sup> if appellant remains aggrieved by the district court's resolution of his writ petition, he may then file a new notice of appeal challenging the resolution of his writ petition.

It is so ORDERED.<sup>2</sup>

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

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

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

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<sup>1</sup>Appellant's pro se appeal statement references two allegedly related judicial review proceedings he initiated in district court—Eighth Judicial District Court Case Nos. A-14-704486-J and A-15-712742-J. The district court dockets for these matters further indicate that both cases were dismissed, without prejudice, and that appellant did not appeal these decisions. While one of the cases appears to be the administrative penalty matter referenced in the underlying writ proceeding, the nature of the other district court proceeding is not clear. Thus, in resolving appellant's NRCP 52(b) motion, the district court should evaluate the impact of the dismissal of these related matters on the underlying writ proceeding, and whether the dismissal of these cases, combined with appellant's failure to appeal those decisions, have rendered the underlying case moot, either in whole or in part. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (noting that a "court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment" and further stating that "even though a case may present a live controversy at its beginning, subsequent events may render the case moot").

<sup>2</sup>In light of this order, we deny as moot all requests for relief currently pending in this appeal.

cc: Hon. Kenneth C. Cory, District Judge  
Terry Louis Carter  
Dept of Business and Industry/Div of Industrial Relations  
/Henderson  
Eighth District Court Clerk