

IN THE SUPREME COURT OF THE STATE OF NEVADA

MEDICAL SERVICES, INC., D/B/A  
PARADISE VALLEY THERAPIES; J.  
MARK GRISHAM, M.D.; PVT, INC.;  
OMEGA THERAPY MANAGEMENT,  
INC.; AND C.G. RENTAL,

Appellants,

vs.

MARILYN GETSCHER,

Respondent.

No. 36325

**FILED**

JAN 04 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of the district court entered after a bench trial in an action for breach of contract and related claims. When our initial review of this appeal revealed two potential jurisdictional defects, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction.

First, it appeared that the district court had not entered a final written judgment adjudicating all the rights and liabilities of all the parties in the case below.<sup>1</sup> The documents before this court indicated that appellant/defendant Medical Services, Inc. asserted a counterclaim against respondent/plaintiff Marilyn Getscher. The district court's May 16, 2000 judgment did not specifically resolve that counterclaim, and appellants provided no other documentation indicating that the counterclaim was formally resolved. An appeal may be taken from a final

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<sup>1</sup>See Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979).

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judgment in an action or proceeding.<sup>2</sup> An order is not final and appealable when it does not formally resolve a pending counterclaim.<sup>3</sup>

Second, even assuming that the May 16, 2000 judgment did resolve all claims as to all parties and was the final judgment in this matter, appellants' June 15, 2000 notice of appeal appeared to have been prematurely filed. Specifically, the judgment was filed on May 16, 2000, and notice of the judgment's entry was served by mail on May 17, 2000. Appellants filed a timely motion to alter or amend the judgment under NRCP 59 on May 30, 2000.<sup>4</sup> Before formal resolution of the motion, however, appellants filed a notice of appeal from the judgment on June 15, 2000. "A notice of appeal filed before the formal disposition of any timely post-judgment motion" has no effect,<sup>5</sup> and fails to vest jurisdiction in this court.<sup>6</sup>

Appellants did not respond to our show cause order. Rather, appellants moved to voluntarily dismiss their appeal pursuant to the parties' stipulation. We cannot dismiss this appeal pursuant to the parties' stipulation, however, because appellants Medical Services, Inc. and PVT, Inc. each filed a bankruptcy petition and on September 20, 2000, we ordered this appeal stayed under the mandatory provisions of federal bankruptcy law.<sup>7</sup> Accordingly, we deny appellants' motion to dismiss.

An appellate court may dismiss an appeal for lack of jurisdiction, however, even where the automatic stay provisions under the

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<sup>2</sup>NRAP 3A(b)(1).

<sup>3</sup>See KDI Sylvan Pools v. Workman, 107 Nev. 340, 342-43, 810 P.2d 1217, 1219 (1991).

<sup>4</sup>See NRCP 59(e) (providing that a motion to alter or amend the judgment must be served within 10 days after service of written notice of the judgment's entry); NRCP 6(e) (providing that when service is done by mail, three additional days are added to the prescribed period).

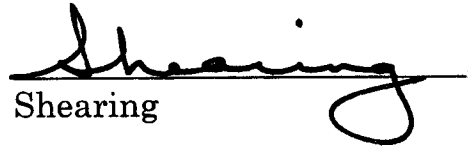
<sup>5</sup>NRAP 4(a)(2).

<sup>6</sup>See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

<sup>7</sup>See 11 U.S.C. § 362(a); see also Cathey v. Johns-Manville Sales Corp., 711 F.2d 60 (6th Cir. 1983).

bankruptcy code otherwise apply.<sup>8</sup> Because appellants did not respond to our show cause order, and have not demonstrated that we have jurisdiction over this appeal, we dismiss this appeal for lack of jurisdiction.<sup>9</sup>

It is so ORDERED.

 \_\_\_\_\_, J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Becker

cc: Hon. Michael A. Cherry, District Judge  
Steven J. Karen  
Hale Lane Peek Dennison Howard & Anderson  
Clark County Clerk

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<sup>8</sup>See Royal Dynasty, Inc. v. Chin, 638 N.E.2d 921 (Mass. App. Ct. 1994).

<sup>9</sup>We deny as moot respondent's March 9, 2001 motion for reconsideration of the order suspending the briefing and transcript preparation schedule.