

IN THE SUPREME COURT OF THE STATE OF NEVADA

SMITH'S FOOD AND DRUG CENTERS,
INC., D/B/A SMITH'S FOOD KING #381,

No. 36395

Appellant,

vs.

RONALD WINIARSKI,

Respondent.

FILED

OCT 02 2001

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

ORDER DISMISSING APPEAL

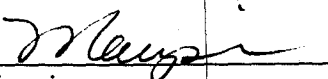
This is an appeal from a \$37,500 judgment entered against appellant on a jury verdict, and from a post-judgment order awarding respondent \$126,915 in attorney fees, \$18,800.06 in costs and \$9,727.91 in prejudgment interest. Appellant's notice of appeal was not timely, however, and this appeal must be dismissed, as we lack jurisdiction.

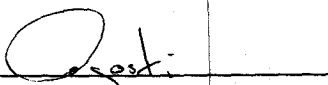
A timely tolling motion terminates the thirty-day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed, but before the district court enters a written order finally resolving the motion. See NRAP 4(a)(2). Here, after entry of the judgment on May 12, 2000, respondent timely filed an NRCP 59(e) motion to amend or alter the judgment on May 15, 2000, and appellant timely filed an NRCP 59(a) motion for a new trial or for remittitur on May 25, 2000. Although the district court's June 13, 2000 order resolved respondent's tolling motion, and awarded attorney fees, costs and prejudgment interest, the order did not resolve appellant's tolling motion. Consequently, appellant's June 30, 2000 notice of appeal was premature, and failed to vest jurisdiction in this court.

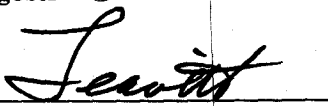
We note that appellant is not prejudiced by dismissal of this appeal, since it timely filed a second notice of appeal on July 24, 2000, after entry of the district court order denying its tolling motion on July 20, 2000. That appeal was docketed as No. 36490, briefing has proceeded as

scheduled in that appeal and appellant has assured this court that the two appeals raise the same issues.¹ We therefore

ORDER this appeal DISMISSED.


_____, C.J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Barker Brown Busby Chrisman & Thomas
Christensen Law Offices
Clark County Clerk

¹We deny appellant's motion to consolidate these appeals, and the motion to stay briefing or extend the briefing schedule in Docket No. 36395, as the motions are moot.