

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY LOUIS CARTER,
Appellant,
vs.
LIBERTY MUTUAL INSURANCE
COMPANY; AND SOUTHWEST
COURIER, INC.,
Respondents.

No. 69999

FILED

FEB 17 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
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.

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, which was docketed with the Nevada Supreme Court as Docket No. 66936, and subsequently transferred to this court for resolution. After the notice of appeal was filed, the district court entered an order purporting to deny appellant's NRCP 52(b) motion on the basis that it lacked jurisdiction to consider the motion due to the filing of the notice of appeal.

This court ultimately dismissed the appeal pending in Docket No. 66936. *See Carter v. Lindsey*, Docket No. 66936 (Order Dismissing Appeal, December 29, 2015). In so doing, this court stated that, pursuant to NRAP 4(a)(4)(B), a timely filed NRCP 52(b) motion tolls the time to file a notice of appeal. *See id.* And because appellant had filed a timely NRCP 52(b) motion, a subsequent notice of appeal filed before that motion was

resolved by a written, file-stamped order was premature and did not divest the district court of jurisdiction to resolve the motion. *See id*; see also NRAP 4(a)(6) (providing that “[a] premature notice of appeal does not divest the district court of jurisdiction”). Although the district court entered an order that purported to deny appellant’s NRCP 52(b) motion, we determined that, because this decision was based on the district court’s erroneous conclusion that it had been divested of jurisdiction, the interests of justice were best served by treating the district court’s order as one declining to consider, rather than denying, the NRCP 52(b) motion. *See Carter*, Docket No. 66936. Based on the foregoing, this court concluded that the NRCP 52(b) motion was still pending, such that we lacked jurisdiction to hear the appeal, and consequently, this court dismissed the matter. *See id*. This court’s dismissal order also noted that certain of appellant’s appellate filings referenced two allegedly related judicial review proceedings, which had seemingly been dismissed, without prejudice, with no appeals taken from those decisions. *See id*. In light of these statements, we expressly urged the district court that, in the course of properly resolving the NRCP 52(b) motion, it should also consider whether this sequence of events rendered the underlying case moot, either in whole or in part. *See id*.

After the entry of our order of dismissal in Docket No. 66936, the parties returned to the district court, which entered a minute ruling stating that it would decide the NRCP 52(b) motion in chambers and that no additional briefing or argument from the parties would be entertained. The district court then entered a new order purporting to deny the NRCP 52(b) motion, prepared by respondents’ counsel, that included findings of fact and conclusions of law nearly identical to those set forth in the prior


order that this court had found inadequate to properly resolve appellant's motion. Indeed, the only substantive difference between the two orders is that the first order contained an express legal conclusion that "this Court lacks jurisdiction to hear the motions filed by [appellant] which request that this Court modify the order denying a Writ of Mandate, and therefore they are both denied," while the latter order removed the lack of jurisdiction phrasing to simply provide that "this Court is denying [appellant]'s motions."


Nonetheless, a comparison of the two orders makes clear that, despite the removal of the express declaration that the district court lacked jurisdiction to consider the NRCP 52(b) motion from the second order, the district court again failed to resolve this motion on its merits in accordance with our order dismissing the appeal in Docket No. 66936. Notably, there is nothing in the most recent order indicating that appellant's NRCP 52(b) motion was resolved on anything but jurisdictional grounds, as the only legal authority relied on in this new order is the same jurisdiction-related caselaw cited in the previous order, which, as relevant here, stands for the proposition that the filing of a notice of appeal divests the district court of jurisdiction. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (providing that a timely notice of appeal divests the district court of jurisdiction to revisit issues pending before the appellate court). But, as discussed above, the district court is not divested of jurisdiction in line with *Mack-Manley* when a party timely files a tolling motion under NRAP 4(a)(4) before the notice of appeal is filed. Furthermore, at the time the district court entered its second order on appellant's NRCP 52(b) motion, there was no pending appeal that could have even been construed as divesting the district

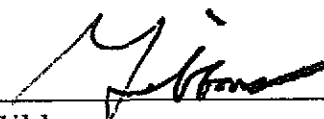
court of jurisdiction to resolve that motion, making the authority relied on by the district court inapplicable.

Given that the district court essentially reentered the same order that this court previously determined improperly declined to consider the NRCP 52(b) motion on jurisdiction grounds, we conclude that this new order should be treated in the same way, such that the NRCP 52(b) motion still remains pending below, thereby necessitating that we again dismiss this appeal for a lack of jurisdiction due to the timely-filed tolling motion. And in light of our dismissal of this matter, we again urge the district court, in the course of resolving the NRCP 52(b) motion, to allow the parties to present additional arguments regarding the potential mootness of the underlying matter, in light of the dismissal of the seemingly related petitions for judicial review that appellant had filed in other district court departments, and to address this mootness issue in accordance with footnote one of the December 29, 2015, order dismissing appellant's previous appeal. *See Carter*, Docket. No. 66936.

It is so ORDERED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹Based on our resolution of this matter, we deny all of appellant's motions that are currently pending with this court as moot.

cc: Hon. Kenneth C. Cory, District Judge
Terry Louis Carter
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk