

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE ALLEN ROSASCHI,
Appellant,
vs.
ANTHONY CARTER,
Respondent.

No. 70808

FILED

JUN 13 2017

ELIZABETH BROWN
CLERK OF THE COURT
BY: *Malca*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamie Allen Rosaschi appeals from a district court post-judgment order awarding respondent Anthony Carter costs in a tort action. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

As an initial matter, the district court called the order being challenged in this appeal an “amended judgment.” And on appeal, Rosaschi argues the district court lacked authority under NRCP 59 or NRCP 60 to amend its judgment, such that the district court’s order should be reversed on that basis.

Before entering the challenged order, the district court entered a summary judgment which resolved all of the substantive claims in the underlying action, and thus, was the final judgment.¹ See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“[A] final judgment is one that disposes of all the issues presented in the case, and leaves

¹Rosaschi filed a timely appeal from that judgment, but the appeal was dismissed as abandoned when he failed to file documents by the required deadlines. See *Rosaschi v. Carter*, Docket No. 69063 (Order Dismissing Appeal, December 15, 2015).

17-901198


nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."). The order challenged in this appeal did not change Rosaschi's legal rights or obligations under the final judgment, and thus, it was not truly an amended judgment. See *Campos-Garcia v. Johnson*, 130 Nev. ___, ___, 331 P.3d 890, 891 (2014). Instead, the challenged order was a post-judgment order adjudicating costs, which is within the district court's authority.² See NRS 18.110 (discussing the procedure for adjudicating costs following the entry of judgment); *Campos-Garcia*, 130 Nev. at ___, 331 P.3d at 891 (recognizing that a post-judgment order adjudicating costs is appealable). As a result, Rosaschi's arguments that the district court lacked authority to amend the judgment do not provide a basis for reversal.


In order to preserve an issue regarding costs, a party must file a motion to retax and settle the costs within three days of service of the memorandum of costs. See NRS 18.110(4); *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005) (concluding that a party waived appellate review of a costs order by failing to file a motion to retax and settle costs). Nearly three months after Carter filed his memorandum of costs, Rosaschi filed an objection to the memorandum and to a proposed amended judgment apparently informally submitted by Carter. Rosaschi also opposed Carter's subsequent motion to amend the judgment. He did not, however, file a timely motion to retax and settle

²In addition to entering costs, the post-judgment order reentered a sanction ordered in the course of the underlying proceedings. But the district court had previously reduced that sanction to a written order, and thus, that portion of the challenged order also did not change Rosaschi's rights or liabilities under the final judgment.

costs.³ As a result, we conclude that he has waived his appellate challenges to the district court's order imposing costs in this matter, *see Sheehan & Sheehan*, 121 Nev. at 493, 117 P.3d at 227, and we therefore necessarily affirm the district court's order.

It is so ORDERED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³To the extent that Rosaschi seeks to rely on *McLeod v. Dist. Court of Fifth Judicial Dist.*, 39 Nev. 337, 157 P. 649 (1916), to assert that he properly challenged the requested costs below, that argument is not properly before us as it was not raised in the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

⁴To the extent that Rosaschi challenges district court actions taken before the entry of summary judgment, such issues are not properly before us, as Rosaschi's appeal from the summary judgment was dismissed, *see Rosaschi*, Docket No. 69063 (Order Dismissing Appeal, December 15, 2015), and this appeal relates only to the post-judgment order awarding costs. Moreover, we find no support in the record for Rosaschi's assertion that the award of costs was the result of bias against him.

cc: Hon. Jerome M. Polaha, District Judge
Jamie Allen Rosaschi
Kent Law
Washoe District Court Clerk