

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY CASTELLO, AN INDIVIDUAL,

No. 37268

Appellant,

**FILED**

vs.

**MAY 25 2001**

CACTUS SAND & GRAVEL SERVICES,

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

Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from a judgment entered after a bench trial in a breach of contract action. Respondent has moved to dismiss this appeal for lack of jurisdiction. Respondent argues that appellant's notice of appeal was premature because it was filed after a timely filed tolling motion, but before the motion's resolution.

The record before this court indicates that on November 17, 2000, the district court entered a judgment after a bench trial in favor of respondent. Notice of entry of that judgment was served by mail on November 28, 2000. On December 11, 2000, appellant filed a timely motion for sanctions under EDCR 7.60(b)(3) and/or to alter or amend the judgment under NRCP 59(e).<sup>1</sup> On January 2, 2001, before resolution of his motion, appellant filed the instant proper person notice of appeal from the judgment.

A timely post-judgment motion to alter or amend the judgment under NRCP 59(e) terminates the running of the time for filing a notice of appeal.<sup>2</sup> A notice of appeal must be filed no later than thirty days after service of written


<sup>1</sup>See NRCP 59(e) (providing that a motion to alter or amend the judgment must be served no later than ten days from service of written notice of the judgment's entry); NRCP 6(e) (providing that when service is done by mail, three days are added to the prescribed period).

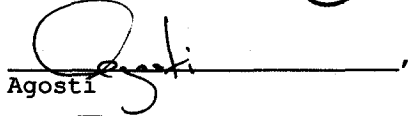
<sup>2</sup>NRAP 4(a)(2).


notice of entry of an order resolving the motion.<sup>3</sup> "A notice of appeal filed before the formal disposition of any timely post-judgment motion . . . shall have no effect."<sup>4</sup> A premature notice of appeal fails to vest jurisdiction in this court.<sup>5</sup>

Appellant's notice of appeal, filed before resolution of his post-judgment motion to alter or amend the judgment, is of no effect and fails to vest jurisdiction in this court. Accordingly, we grant respondent's motion, and we

ORDER this appeal DISMISSED.<sup>6</sup>

  
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Shearing J.

  
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Agosti J.

  
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Rose J.

cc: Hon. Mark R. Denton, District Judge  
Susan K. Frankewich  
Gary Castello  
Clark County Clerk

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<sup>3</sup>Id.

<sup>4</sup>Id.

<sup>5</sup>See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

<sup>6</sup>We note that on March 16, 2001, the district court entered an order resolving appellant's motion to alter or amend the judgment, and appellant filed a new notice of appeal, which was docketed in this court as No. 37729.