

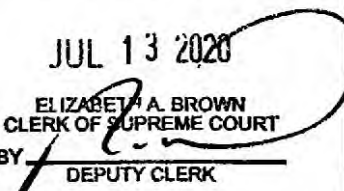
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA J. GIBSON,
Appellant,
vs.
THOMAS J. GIBSON,
Respondent.

No. 77060-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Lisa J. Gibson appeals from a post-divorce decree order in a family matter. Eighth Judicial District Court, Family Court Division, Clark County; Vincent Ochoa, Judge.

Following entry of the parties' decree of divorce in 2003, the parties have continued to litigate the terms and enforcement of the decree. As relevant here, after the district court filed a post-decree order on June 10, 2015, Lisa filed a motion for clarification, asking the district court to reconsider the order. But before that motion was decided, Lisa filed a notice of appeal from the June 10 order. *See Gibson v. Gibson*, Docket No. 68467. Because Lisa had appealed from the June 10 order, the parties entered a stipulation to take her motion off-calendar, pending the appeal.

In that appeal, the Nevada Supreme Court determined that the notice of appeal was prematurely filed because Lisa's pending motion constituted a tolling motion and had not yet been resolved. *See Gibson*, Docket No. 68467 (Order Dismissing Appeal, May 18, 2016). The supreme court further noted that the parties' stipulation taking Lisa's tolling motion off-calendar did not constitute a disposition of that motion. *Id.* Accordingly, the supreme court concluded that because the notice of appeal was

prematurely filed, it lacked jurisdiction to consider the appeal and ordered the appeal dismissed. *Id.*

After remand from that appeal, the matter was placed back on calendar, but the parties subsequently stipulated to continue the matter to a mutually agreed upon date as Lisa's counsel was in ill health and could not travel. During the pendency of the case, the matter has been administratively reassigned a number of times and ultimately was transferred to Department G. In 2017, the district court judge in Department G noted that Lisa's motion for clarification, previously filed in Department S along with another motion that had been taken under advisement, had not yet been resolved by that department. Accordingly, the district court judge in Department G temporarily reassigned the matter back to Department S for resolution of those matters.

On August 21, 2018, the district court judge in Department S filed an order concluding that, based on the stipulation to take Lisa's motion for clarification off-calendar pending the outcome of the appeal, the motion had been withdrawn such that nothing was pending before the court for resolution. This appeal followed.


As the supreme court concluded in its prior order, Lisa's motion for clarification constituted a timely tolling motion, and the parties' stipulation to take the motion off-calendar did not constitute a disposition of the motion. *See id.* Thus, contrary to what the district court concluded, the motion had not been resolved or withdrawn and was therefore still pending before the court, such that the motion should have been resolved on the merits. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (providing that under the law of the case doctrine, a higher

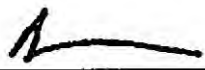
court's decision in a case must be followed as that case progresses in the district court or in a later appeal).

Under these circumstances, Lisa's tolling motion still remains pending below, which necessarily renders her notice of appeal in the instant matter prematurely filed. *See* NRAP 4(a)(4); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (holding that a motion for reconsideration can be considered a tolling motion to alter or amend the order). Accordingly, we lack jurisdiction over Lisa's premature appeal and we therefore order this appeal dismissed. Once the district court enters an order that resolves Lisa's motion on the merits, if she remains aggrieved by the district court's order, Lisa may then file a new notice of appeal.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Family Division
Hon. Vincent Ochoa, District Judge, Family Division
Department G, Eighth Judicial District Court, Family Division
Robin J. Barber
Nevada Family Law Group
Eighth District Court Clerk