

IN THE SUPREME COURT OF THE STATE OF NEVADA

TICO CONSTRUCTION COMPANY,
INC., A NEVADA CORPORATION,
Appellant,
vs.
JASON POWELL,
Respondent.

No. 85965

FILED

MAY 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order denying a postjudgment motion for attorney fees. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

This court's preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) revealed a potential jurisdictional defect. Specifically, the notice of appeal appeared to be prematurely filed under NRAP 4(a) because it appeared that it was filed after the timely filing of a tolling motion under NRAP 4(a)(4) and before the tolling motion was formally resolved. Accordingly, this court directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

Appellant has filed a response to this court's order to show cause and proposes that this court has jurisdiction over this appeal because the tolling motion was resolved when the district court entered an order staying disposition of the motion, along with another motion, pending resolution of the instant appeal. The district court appears to be under the mistaken impression that it is divested of jurisdiction to rule on the tolling motion due to the notice of appeal filed in the instant matter.


A notice of appeal filed before the resolution of a timely tolling motion does not divest the district court of jurisdiction. *See*

NRAP 4(a)(6). Because the district court has not resolved the tolling motion, this appeal is premature. *See Foster v. Dingwall*, 126 Nev. 49, 52-53, 229 P.3d 453, 455-56 (2010) (explaining that after a timely notice of appeal has been filed, the district court lacks jurisdiction to enter an order granting a tolling motion, but retains jurisdiction to deny such a motion). This court lacks jurisdiction and

ORDERS this appeal DISMISSED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Lynne K. Simons, District Judge
David Wasick, Settlement Judge
Humphrey O'Rourke Law PLLC
Millward Law, Ltd.
Washoe District Court Clerk