

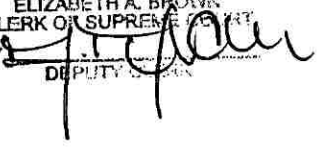
IN THE SUPREME COURT OF THE STATE OF NEVADA

NICOLE MICHELLE SMEE,
Appellant,
vs.
BRENON SEAN YORK,
Respondent.

No. 87792

FILED

JUN 21 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order terminating a domestic partnership. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Respondent has moved to dismiss this appeal. He asserts this court lacks jurisdiction because the notice of appeal was filed more than 30 days after service of notice of entry of the challenged order. He argues the district court did not have jurisdiction to rule on his timely motion to alter or amend the decree because appellant had filed a notice of appeal, which was the subject of Docket No. 87464, and the motion did not toll the time for filing this appeal because only a tolling motion filed before the notice of appeal tolls the time to file the notice of appeal. He maintains that the dismissal of Docket No. 87464, due to appellant's failure to pay the filing fee, foreclosed appellant's ability to appeal the order.

In opposition, appellant argues that respondent's timely tolling motion tolled the time for appeal for all parties pursuant to NRAP 4(a)(4), even though she had filed a notice of appeal before respondent filed his

tolling motion, and that she timely filed the notice of appeal in this matter less than 30 days after service of notice of entry of the order denying the last pending tolling motion. In reply, respondent asserts that the district court's inability to grant his motion without leave from this court signifies that the motion did not toll the time for appeal.

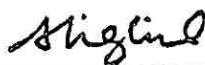
When a party timely files a motion listed in NRAP 4(a)(4) in the district court, "the time to file a notice of appeal runs for all parties from entry of an order disposing of the last such remaining motion, and the notice of appeal must be filed no later than 30 days from the date of service of written notice of entry of that order." Such motions include a motion to amend pursuant to NRCP 52(b) and a motion to alter or amend the judgment pursuant to NRCP 59. NRAP 4(a)(4)(B), (C). However, once an appeal is perfected, the district court is divested of jurisdiction to act, other than on collateral matters that are independent from the appealed order. *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454-55 (2010). Therefore, if a notice of appeal is filed before a timely tolling motion, the motion ceases to toll the time for appeal. *See id.* 126 Nev. at 52 n.1, 228 P.3d at 455 n.1.

Here, appellant filed her first notice of appeal in the district court on October 12, 2023, at 4:39 p.m. and respondent filed his motion to alter or amend the judgment pursuant to NRCP 52(b) and NRCP 59 on October 12, 2023, at 4:40 p.m. Appellant never paid the filing fee for her appeal in Docket No. 87464. Accordingly, the appeal was dismissed. After the resolution of post-judgment motions below, appellant filed her notice of appeal in this appeal. Because respondent filed his motion after appellant's notice of appeal, his motion did not toll the time to file an appeal from the

order, and appellant's second notice of appeal was untimely. Accordingly, respondent's motion is granted and this appeal is dismissed.

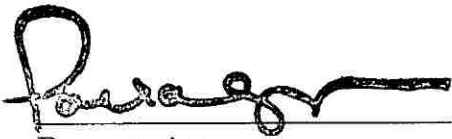
It is so ORDERED.


_____, C.J.
Cadish


_____, J.
Stiglich

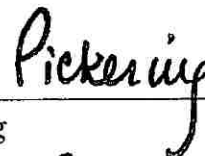

_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

PICKERING and BELL, JJ., dissenting:

We would allow the appeal to proceed and therefore dissent.


_____, J.
Pickering


_____, J.
Bell

cc: T. Arthur Ritchie, Jr., District Court Judge
Ara Shirinian, Settlement Judge
The Grigsby Law Group
Ford & Friedman, LLC
Eighth Judicial District Court Clerk