

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON DEMARIUS GREEN,
Appellant,
vs.
WARDEN K. LEGRAND; C/O
BEQUEET; AND THE STATE OF
NEVADA,
Respondents.

No. 87454-COA

FILED

JUL 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Brandon Demarius Green appeals from a district court order dismissing his complaint in an inmate litigation matter. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Our review of the documents before us on appeal reveals a jurisdictional defect—specifically that the notice of appeal in this matter was prematurely filed. In the underlying proceeding, respondents moved to dismiss Green’s complaint and, after he failed to timely oppose the motion, the district court entered an order granting it on October 3, 2023. On October 9, 2023, Green filed a document entitled “notice of improper filing” in which he asserted that respondents failed to serve him with a copy of their motion to dismiss and that the motion should therefore be denied. While styled as a notice, Green’s filing essentially sought a substantive change to the order dismissing his complaint to the extent that it argued he had not been served with the motion and that the motion should thus be denied. *See Luong v. Vahey*, No. 83929-COA, 2022 WL 17367574, at *3 (Nev. Ct. App. Nov. 30, 2022) (Order Affirming in Part, Reversing in Part and Remanding) (providing that this court construes motions based on their

substance rather than their titles); *cf. State Farm Mut. Auto Ins. Co. v. Wharton*, 88 Nev. 183, 186, 495 P.2d 359, 361 (1972) (providing “that it is the nature of the grievance rather than the form of the pleadings that determines the character of the action”). As a result, Green’s October 9 filing qualified as a tolling motion under NRCP 59(e). *See* NRAP 4(a)(4)(C) (explaining that an NRCP 59(e) motion to alter or amend the judgment tolls the time for filing a notice of appeal); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (recognizing that a timely-filed post-judgment motion for reconsideration or certain other relief that seeks a substantive change to the challenged order qualifies as a tolling motion under NRCP 59(e)).

Because nothing in the record before this court indicates that Green’s motion was resolved by the district court, we conclude that his October 12, 2023, notice of appeal was prematurely filed and was of no effect. *See* NRAP 4(a)(6) (“A premature notice of appeal does not divest the district court of jurisdiction.”). Consequently, Green’s subsequent motion for reconsideration—filed approximately an hour after his notice of appeal was filed on October 12, 2023—which reiterated Green’s request for substantive relief from the district court’s dismissal order based on the fact he was not served with the motion to dismiss also had tolling effect. *See* NRAP 4(a)(4)(C); *see also AA Primo Builders, LLC*, 126 Nev. at 585, 245 P.3d at 1195. Like the notice of improper filing, this motion does not appear to have been resolved by the district court based on the documents before us. Under these circumstances, we lack jurisdiction over Green’s premature appeal, and we therefore order this appeal dismissed. Once the district court enters orders resolving the foregoing motions on the merits, Green

may file a new notice of appeal if he remains aggrieved by the court's decision.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Brandon Demarius Green
Attorney General/Carson City
Pershing County District Attorney
Clerk of the Court/Court Administrator