IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE LYNN CONNELLY,
Appellant,
vs.
RAYMOND EUGENE CONNELLY,
Respondent.

No. 37930

RAYMOND EUGENE CONNELLY,
Appellant,
vs.
VICKIE LYNN CONNELLY,
Respondent.

No. 38368

FILED

JUN 16 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL IN DOCKET NO. 38368 AND ALLOWING APPEAL IN DOCKET NO. 37930 TO PROCEED

These are consolidated appeals from a final divorce decree and an order refusing to rule on an NRCP 60(b) motion and motion for reconsideration. Our review of the documents before us reveals that we lack jurisdiction over the appeal in Docket No. 38368.

Vickie Lynn Connelly and Raymond Eugene Connelly were granted a divorce on May 2, 2001. Notice of the decree's entry was served by mail on May 17, 2001. On May 22, 2001, Vickie timely filed a notice of appeal (Docket No. 37930). Raymond did not immediately appeal from the final decree.

On May 31, 2001, Raymond filed in the district court an NRCP 59(e) motion to amend and/or an NRCP 60(a) motion to correct clerical errors. On June 25, 2001, the district court denied the motion on the basis that Raymond's NRCP 59(e) motion was untimely filed, and that once Vickie's notice of appeal was filed, it was divested of jurisdiction and could

not decide the Rule 60(a) motion, unless this court granted leave for such consideration.

On July 2, 2001, Raymond moved the district court under NRCP 60(b) to set aside and/or for reconsideration of its June 25 order. Raymond insisted his 59(e) motion was timely; and thus, Vickie's notice of appeal was ineffective. On July 25, 2001, the district court declined to rule on Raymond's motion to set aside and reconsider the June order. Again, the district court found Raymond's 59(e) motion to amend untimely, and concluded that it was divested of jurisdiction to decide any post-decree motions.

On August 20, 2001, Raymond filed a notice of appeal from the divorce decree and from the July 25 order declining to rule on the NRCP 60(b) motion and the motion for reconsideration (Docket No. 38368). Vickie has filed a motion to dismiss Raymond's appeal. Raymond opposes the motion.

Under NRAP 4(a), an appeal must be filed within thirty days after service of written notice of the order or judgment's entry. Where service is by mail, three days are added to the thirty-day period.[1] A timely filed motion to alter or amend a judgment under NRCP 59(e) terminates the time in which to file the notice of appeal.[2] Such a motion must be filed within ten days after written notice of the judgment's entry is served.[3] If

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[1]See NRAP 26(c).

[2]NRAP 4(a)(2).

[3]See NRCP 59(e); Stapp v. Hilton Hotels Corp., 108 Nev. 209, 826 P.2d 954 (1992).

an NRCP 59(e) motion is untimely, however, it is of no effect and does not toll the time for filing an appeal.[4]

The documents before this court reveal that notice of the divorce decree's entry was served by mail on May 17, 2001. Raymond's NRCP 59(e) motion was therefore due for filing no later than Thursday, May 30, 2001. Raymond filed his motion on May 31, 2001, one day late. Thus, his motion did not terminate the time for an appeal. Raymond's notice of appeal, filed August 20, 2001, is also untimely, because it was filed more than thirty days after service of written notice of the divorce decree's entry.

Finally, as for Raymond's appeal from the July 25, 2001 order declining to rule on his motion to set aside and reconsider the June 25, 2001 order, an order denying reconsideration is not appealable; nor is an order declining to rule on an NRCP 60(b) motion for lack of jurisdiction.[5] Moreover, no appeal can be taken from an order denying an NRCP 59(e) motion to amend, because such an order is not an appealable special order after final judgment under NRAP 3A(b).[6] As we lack jurisdiction over the

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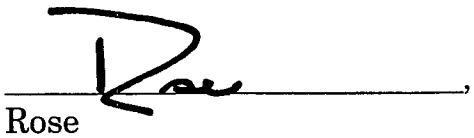
[4]NRAP 4(a)(2).

[5]See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987) (recognizing that a timely notice of appeal divests the district court of jurisdiction); Morrell v. Edwards, 98 Nev. 91, 640 P.2d 1322 (1982) (providing that if a motion to alter or amend a judgment is not served within ten days after service of written notice of a judgment's entry, the time for filing an appeal is not tolled); cf. Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987) (observing that an appeal may be taken from an order denying a motion to set aside a judgment under NRCP 60(b)).

[6]See Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995).

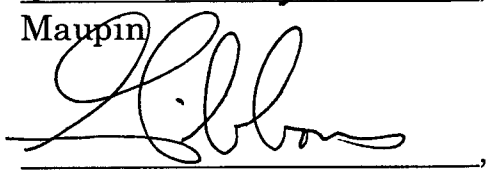
appeal in Docket No. 38368, we dismiss it. Each party shall bear its own attorney fees and costs with respect to that appeal. The appeal in Docket No. 37930 may proceed.

It is so ORDERED.[7]



_____, J.
Rose

_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Richard Wagner, District Judge
Stringfield Law Offices
Marvel & Kump, Ltd.
Elko County Clerk

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[7]In light of this order, we deny as moot Raymond's June 29, 2001 motion for remand.