

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE O'CONNER BEARD,

Appellant,

vs.

MICHELLE BEARD,

Respondent.

No. 38628

FILED

NOV 15 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a final divorce decree.¹ Our review of the documents before us reveals a jurisdictional defect. Specifically, the notice of appeal was filed after a timely motion for new trial under NRCP 59(a), and before the motion was formally resolved. Under NRAP 4(a)(2), a motion for new trial terminates the time to file a notice of appeal, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed, and before the district court enters a written order finally resolving the motion. Here, the final decree was entered on September 7, 2001. A notice of entry of the decree was filed with the district court on September 7, 2001, but did not contain a proof of service indicating how and when it was served. Accordingly, the motion for new trial filed on September 24, 2001, was timely. Since this motion tolled the time in which an appeal could be taken, the notice of appeal, filed on October 10, 2001, is premature, and fails to vest jurisdiction in the court. Accordingly, we

ORDER this appeal DISMISSED.

Shearing _____ J.
Shearing

Rose _____ J.
Rose

Becker _____ J.
Becker

¹On October 16, 2001, the clerk of this court issued a notice to appellant to pay the filing fee in this appeal. We note that the district court granted in forma pauperis status to appellant, and so no filing fee is due. Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.

cc: Hon. T. Arthur Ritchie, Jr., District Judge,
Family Court Division
George O'Conner Beard
Michelle Beard
Clark County Clerk