

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN C. SERPA, AN INDIVIDUAL,  
Appellant,

No. 39718

vs.

CARSON CITY, A CONSOLIDATED  
MUNICIPALITY AND POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

**FILED**

JUN 12 2003

Respondent.

JANE P. J. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rebad*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

On October 23, 2002, this court entered an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, the order noted that it appeared the notice of appeal was filed after the timely filing of a tolling motion under NRAP 4(a)(2), and before the tolling motion was formally resolved.

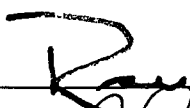
On November 21, 2002, appellant filed a response to the order. In the response, appellant concedes that the notice of appeal was prematurely filed and represents that the notice of appeal was filed in the event the tolling motion was "later determined to be not a proper tolling motion." Appellant also requests that "this matter be remanded to the District Court on the grounds that the order appealed from is not final" pursuant to Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

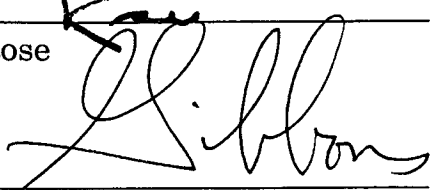
We conclude that appellant's reliance on Huneycutt is misplaced. In Huneycutt, the appellant had filed a timely notice of appeal which vested jurisdiction in this court. Thereafter, the appellant moved to remand so that she could pursue motions in the district court pursuant to NRCP 60(b) and NRCP 59(a). We held that upon receipt of certification from the district court that it is inclined to grant the motions, the appellant could file a motion for remand in this court. Huneycutt did not, however, involve any jurisdictional defects such as a premature notice of

appeal. Thus, we conclude Huneycutt is inapplicable and we deny appellant's request to remand this appeal to the district court pursuant to Huneycutt.

Pursuant to NRAP 4(a)(2), a notice of appeal filed before the formal disposition of a pending tolling motion "shall have no effect." Additionally, this court has held that the proper and timely filing of a notice of appeal is jurisdictional. Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). We conclude the notice of appeal failed to vest jurisdiction in this court because it was filed prior to the district court's formal resolution of appellant's tolling motion. Accordingly, as we lack jurisdiction, we dismiss this appeal.<sup>1</sup>

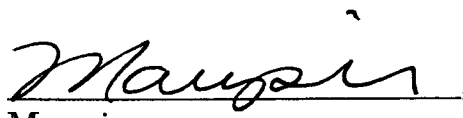
It is so ORDERED.

  
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Rose J.

  
\_\_\_\_\_  
Gibbons J.

MAUPIN, J., dissenting:

Because of my view of the rule applied in this case, I dissent.

  
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Maupin J.

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<sup>1</sup>Appellant also represents that the order appealed from is not a final appealable order because it "did not resolve [respondent's] counterclaims." We note that this constitutes an independent basis for dismissal of this appeal. See NRAP 3A(b)(1) (an appeal may be taken from a final judgment) and Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that disposes of all the issues presented in a case and leaves nothing for future consideration of the court, except for post-judgment issues such as attorney fees and costs).

cc: Hon. Michael R. Griffin, District Judge  
Crowell Susich Owen & Tackes  
Carson City District Attorney  
Carson City Clerk