

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL IANNUCCILLI,
Appellant,
vs.
KEITH E. GREGORY,
Respondent.

No. 39906

FILED

MAY 06 2003

ORDER DISMISSING APPEAL

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


On September 12, 2002, respondent filed a motion to dismiss this appeal. In support of the motion, respondent represents that this appeal should be dismissed because the notice of appeal was filed prematurely. Specifically, respondent represents that 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.


Appellant opposes the motion. In support of the opposition, appellant represents that the notice of appeal was filed after the district court denied the tolling motion. Specifically, appellant asserts that the district court denied his tolling motion in open court on June 24, 2002, and he filed the notice of appeal on July 9, 2002. Attached to the opposition is a copy of the district court minutes indicating that the tolling motion was denied in open court on June 24, 2002. We note however, that a written order formally resolving the tolling motion was not filed until July 16, 2002, seven days after the filing of the notice of appeal.

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, and that "the district court's oral pronouncement from the bench, the clerk's minute order, and even an

unfiled written order are ineffective for any purpose and cannot be appealed." 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, we grant respondent's motion, and we dismiss this appeal.


It is so ORDERED.


_____, J.
Rose


_____, J.
Gibbons

MAUPIN, J., dissenting:

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


_____, J.
Maupin

cc: Hon. Norman C. Robison, Senior Judge
Michael D. Davidson, Settlement Judge
Stein & Rojas
Walker Silver PLC
Pico & Mitchell
Clark County Clerk