

IN THE SUPREME COURT OF THE STATE OF NEVADA

TANYA TANG HO LAU,
Appellant,
vs.
GEORGE LOONG PO LAU,
Respondent.

No. 39999

FILED

MAY 06 2003

ORDER DISMISSING APPEAL

JANETIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

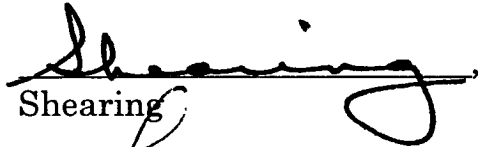
On December 13, 2002, this court entered an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, that order noted that it appeared the notice of appeal was filed after the timely filing of a tolling motion under NRAP 4(a)(2), and before the tolling motion was formally resolved.


On January 13, 2003, appellant filed a response to our order to show cause. In the response, appellant concedes that the notice of appeal was filed before the formal resolution of the tolling motion. Specifically, appellant represents that the district court entered its "Findings of Fact, Conclusions of Law, Decision and Order" on May 21, 2002, and she timely filed her tolling motion on May 31, 2002. See Morrell v. Edwards, 98 Nev. 91, 640 P.2d 1322 (1982) (a tolling motion filed within 10 days of service of written notice of entry of judgment tolls the time for filing the notice of appeal). On July 25, 2002, appellant filed the notice of appeal. The tolling motion was not formally resolved until July 31, 2002.

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. See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (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.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. T. Arthur Ritchie, District Judge, Family Court Division
Fitzgibbons & Anderson
Patti & Sgro
Clark County Clerk