

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAHIBA ATHARI, AN INDIVIDUAL,
Appellant,
vs.
ADEL KHALATBARI, AN INDIVIDUAL,
Respondent.

No. 40312

FILED

FEB 27 2003

ORDER DISMISSING APPEAL

JANET M. OLSON
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an August 7, 2002 district court order that (1) denied Lahiba Athari's motion for reconsideration of a May 29, 2002 order granting Adel Khalatbari's motion to dismiss his own request for a trial de novo, (2) decreed that there will not be a trial, (3) decreed that Athari may appeal the order, (4) decreed that Athari may not file her own request for trial, and (5) entered a \$4,500 judgment for Athari on her arbitration award, plus \$3,000 in attorney fees, for a total judgment of \$7,500.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a possible jurisdictional defect. Specifically, we were unable to discern whether the district court's May 29, 2002 order was a final appealable order; that is, one which disposed of all the issues and left nothing for the future consideration of the court except for post-judgment issues like attorney fees and costs.¹ The case had been closed and was re-activated in the district court when appellant filed her motion for reconsideration, but a motion for reconsideration is not a tolling motion,² and an order denying

¹Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

²Chapman Industries v. United Insurance, 110 Nev. 454, 874 P.2d 739 (1994).

reconsideration or rehearing is not substantively appealable.³ Thus, if the May 29, 2002 order was final and appealable, it appeared that the notice of appeal may have been filed too late to confer jurisdiction on this court.⁴ Consequently, we ordered Athari to show cause why the appeal should not be dismissed for lack of jurisdiction. We conclude that she has not established jurisdiction and this appeal must be dismissed.

In her response to the show cause order, Athari argues that the May 29, 2002 order was not a final, appealable judgment because it failed to address her arguments: (1) that granting the motion would give Khalatbari unilateral power to avoid a trial de novo, (2) that a timely trial de novo request is final and binding under NAR 18(A) and cannot be withdrawn by one party, and (3) that she should be given the opportunity to file her own trial de novo request because she wanted a trial, but had relied on his request to her detriment. According to Athari, since the May 29, 2002 order did not resolve these issues and the August 7, 2002 order did, the August 7, 2002 order constituted the court's final judgment, and her appeal is timely. Athari is mistaken.

In Lee v. GNLV Corp.,⁵ we clarified that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the further consideration of the court, except for post-judgment issues such as attorney fees and costs. The May 29, 2002 order was a


³See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (no appeal from order denying rehearing); see also Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).


⁴See NRAP 4(a)(1); NRAP 26(c).

⁵116 Nev. at 426, 996 P.2d at 417.

final, appealable order. Khalatbari's was the only trial de novo request before the court, since Athari had not filed one, and by granting his motion, striking his request and affirming the arbitration award, the court disposed of all the issues in the case. Athari's arguments on reconsideration supported her assertion that the district court's May 29, 2002 order was wrong; they do not support her assertion that it was not final. As we lack jurisdiction over this appeal, we

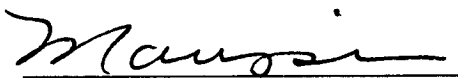
ORDER this appeal DISMISSED.⁶


_____, J.
Rose


_____, J.
Gibbons

MAUPIN, J., dissenting:

I respectfully dissent on two grounds. First, no judgment was entered in this case. Second, I would overturn prior caselaw holding that motions for reconsideration, when filed before a notice of appeal has been filed, are not tolling motions.


_____, J.
Maupin

⁶We deny as moot Khalatbari's motion for leave to proceed in proper person.

cc: Hon. Sally L. Loehrer, District Judge
Doris Elie Nehme
Adel Khalatbari
Clark County Clerk