

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER WILLIAM NORMAN,
Appellant,

vs.

DON ROGER NORMAN; L. LANCE
GILMAN; SOUTH MEADOWS
PROPERTIES LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP; TAHOE-RENO
INDUSTRIAL CENTER, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; NORMAN PROPERTIES,
INC., A CALIFORNIA CORPORATION;
TRI WATER AND SEWER COMPANY,
A DELAWARE CORPORATION;
MILLENNIUM UTILITY
INVESTMENTS, INC., A NEVADA
CORPORATION; TRI OWNERS
ASSOCIATION, A NEVADA
CORPORATION; GLOBAL POWER
ASSOCIATES, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
NORMAN NORTHWEST
INVESTMENTS, A NEVADA LIMITED
LIABILITY COMPANY; SOUTH
MEADOWS COMMERCE CENTER,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; SOUTH MEADOWS
COMMERCE CENTER, INC., A
NEVADA CORPORATION; NORMAN
INVESTMENTS, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY; AND
NORMAN/MOUNT ROSE, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Respondents.

No. 41963

FILED

OCT 15 2004

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

ORDER DISMISSING APPEAL

This is an appeal from a district court's July 28, 2003 order in a partnership case. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents submitted to this court revealed two potential jurisdictional defects, we ordered appellant, on June 24, 2004, to show cause why this appeal should not be dismissed for lack of jurisdiction. In the show cause order, we noted that it was unclear whether the July 28 order constitutes a final, appealable judgment, given that respondents' four consolidated claims might still be pending.¹ We also noted that appellant had suggested in his June 15, 2004 stay motion that a tolling motion, filed August 4, 2003, is pending in the district court. If so, appellant's notice of appeal would have been prematurely filed, failing to vest jurisdiction in this court.²

In response to our show cause order, appellant has provided a file-stamped copy of the purported tolling motion, entitled "Plaintiff's Motion to Enforce Parties' Stipulation; Motion for Action upon Special Master's Final Report; Motion to Vacate and for Relief from Order Filed July 28, 2003 or, in the Alternative, Motion for Stay of Proceedings re: Order Filed July 28, 2003; Motion for NRCP 63 Relief." Appellant argues that the motion seeks relief of both a tolling and non-tolling nature, and

¹See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000); Rae v. All American Life & Cas. Co., 95 Nev. 920, 605 P.2d 196 (1979); Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990).

²See NRAP 4(a)(2).

that the notice of appeal was filed before the motion's resolution as a cautionary device to the extent that this court's appellate rules might be interpreted as effecting only a partial tolling. Appellant concedes, however, that the notice of appeal is premature if this court recognizes the motion as seeking, at least in part, relief under NRCPC 59, and if this court follows a bright line rule that the time in which to seek appellate review is tolled as to all appellate issues, not just the issues subject to the tolling motion.


Although this court has not expressly declared such a bright line rule, the rule is implicit within our case law and rules of appellate procedure. For instance, in Matter of Application of Duong,³ we focused our jurisdictional inquiry on the effect of appellant's motion to either reconsider or alter or amend an order denying appellant's petition to seal records. We noted that, while a motion for reconsideration does not toll the time in which to appeal, a motion to alter or amend does, and that appellant's notice of appeal did not confer jurisdiction because it was filed after the district court's order denying reconsideration but before resolution of the motion's alter or amend component. If this court recognized partial tolling, Duong would have been decided differently. Further, NRAP 4(a)(2) cannot be read as creating partial tolling. The rule's language, which terminates "[t]he running of the time for filing a notice of appeal . . . as to all parties" upon the filing of an enumerated motion and ties the "full time for appeal" under every provision of NRAP 4(a) to the enumerated motion's resolution, leaves no room for a notice of appeal to be filed for issues that are not the subject of a tolling motion.

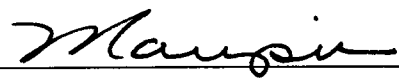
³118 Nev. 920, 923, 59 P.3d 1210, 1212 (2002).

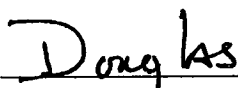
Any other interpretation would present the specter of piecemeal appellate review, which is something we have expressly rejected.⁴

As to whether appellant's August 4, 2003 motion seeks relief characteristic of an enumerated tolling motion, we conclude that it does.⁵ Therefore, appellant's notice of appeal, filed before the motion's resolution, had no effect.⁶

Consequently, as this court lacks jurisdiction over this appeal, we ORDER this appeal DISMISSED.⁷


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
McDonald Carano Wilson LLP/Reno
Mark H. Gunderson, Ltd.
Washoe District Court Clerk

⁴See Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

⁵See NRCP 52(b); NRCP 59(e).

⁶NRAP 4(a)(2); Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987). We assume, without deciding, that the district court's July 28, 2003 order resolved all of the claims pending below.

⁷Appellant's motions for stay and for submission are denied as moot.