

SUPREME COURT OF NEVADA

UMC Physicians' Bargaining Unit of Nevada Service Employees
Union v. Nevada Service Employees Union

UMC Physicians' Bargaining Unit · No. 85446 · Decided November 7, 2022

SUMMARY

The Nevada Supreme Court dismissed an appeal from an order granting summary judgment because the appellants had filed a timely motion for reconsideration that qualified as a tolling motion under NRAP 4(a)(4). The court held that the notice of appeal filed before resolution of that motion was premature and ineffective to confer jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per curiam; Pickering, J.; Mark Gibbons, Senior Justice, participating under a general order of assignment
JURISDICTION	Nevada
DECIDED	November 7, 2022
DOCKET	85446
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a district court order granting summary judgment; the respondent moved to dismiss the appeal as premature because the appellants had filed an unresolved timely motion for reconsideration that operated as a tolling motion.
STANDARD OF REVIEW	The court reviewed the existence of appellate jurisdiction de novo.
PRECEDENTIAL VALUE	Published opinion
PARTIES	UMC Physicians' Bargaining Unit of Nevada Service Employees Union, SEIU Local 1107, AFL-CIO, CLC, Deborah Boland, M.D., Joel Canga, M.D., Edgar L. Cox, M.D., Andrea Fong, D.O., Neil W. Fleigoodsell, M.D., Deborah Goodwin, M.D., Maria Martinez, M.D., John Nepomuceno, M.D., George Oehlsen, D.O., Ardeshir Rohani, M.D., Ernesto Rubio, M.D., Timothy Schrader, M.D., Ronald Taylor, M.D., Bradley Walker, M.D., Michael S. Tanner, as special

TOPICS

appellate jurisdiction

appellate procedure

motion for reconsideration

summary judgment

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

employment law

QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court had jurisdiction over a notice of appeal filed after entry of written judgment but while a timely motion for reconsideration qualifying as a tolling motion remained unresolved.
2. Whether the appeal should be dismissed as premature under NRAP 4(a)(4) and NRAP 4(a)(6).

HOLDINGS

1. A notice of appeal filed after a timely tolling motion is filed but before the district court enters a written order finally resolving that motion is of no effect and does not invoke the Nevada Supreme Court's jurisdiction.

KEY QUOTATIONS

“A timely tolling motion tolls the 30- day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court enters a written order finally resolving the motion.”

“Accordingly, we conclude this court lacks jurisdiction. The motion to dismiss is granted and we ORDER this appeal DISMISSED.”

FACTUAL BACKGROUND

The district court granted summary judgment in favor of the respondent. The appellants timely filed a motion for reconsideration seeking relief under NRCP 52(b) and NRCP 59, and the district court had not entered a written order resolving that motion when appellants filed their notice of appeal.

PROCEDURAL HISTORY

The Eighth Judicial District Court for Clark County entered a written judgment and granted summary judgment. Appellants filed a timely motion for reconsideration under NRCP 52(b) and NRCP 59, followed by a notice of appeal before the district court resolved that motion. The Nevada Supreme Court granted the respondent's motion to dismiss because the unresolved tolling motion rendered the notice of appeal premature and ineffective.

DISPOSITION

dismissed

CASES CITED

- AA Primo Builders v. Washington, 126 Nev. 578, 245 P.3d 1190 (2010)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA LTMC PHYSICIANS' BARGAINING UNIT No. 85446 OF NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, CLC, AN EMPLOYEE ORGANIZATION; DEBORAH BOLAND, M.D.; JOEL CANGA, M.D.; EDGAR L. COX, M.D.; ANDREA FONG, D.O.; NEIL W. FLEI GOODSELL, M.D.; DEBORAH NOV 0 7 2022 GOODWIN, M.D.; MARIA MARTINEZ, M.D.; JOHN NEPOMUCENO, M.D.; GEORGE OEHLSEN, D.O.; ARDESHIR ROHANI, M.D.; ERNESTO RUBIO, M.D.; TIMOTHY SCHRADER, M.D.; RONALD TAYLOR, M.D.; BRADLEY WALKER, M.D.; AND MICHAEL S. TANNER AS SPECIAL ADMINISTRATOR OF THE ESTATE OF STERLING TANNER, M.D., AS INDIVIDUAL LOCAL GOVERNMENT EMPLOYEES AND MEMBERS OF THE UMC PHYSICIANS' BARGAINING UNIT OF NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, CLC, Appellants, vs. NEVADA SERVICE EMPLOYEES UNION, SEIU LOCAL 1107, AFL-CIO, A NONPROFIT COOPERATIVE CORPORATION, Respondent.

ORDER DISMISSING APPEAL This is an appeal from a district court order granting a motion for summary judgment. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge. On October 7, 2022, respondent filed a motion to dismiss this appeal for lack of jurisdiction. Respondent asserts that the appeal is SUPREME COURT OF premature because appellants timely filed a motion for reconsideration that NEVADA 7A 5Lf' D sought relief under NRCP 52(b) and NRCP 59 and the district court has not yet resolved the motion.

Appellants oppose the motion, arguing that the notice of appeal is not premature because they filed the notice of appeal after the written judgment was entered. Appellants argue that even if their motion for reconsideration is considered a tolling motion, under NRAP 4(a)(6), upon entry of the district court order resolving the motion for reconsideration, jurisdiction will be properly vested in this court.

The record before this court demonstrates appellants filed the notice of appeal after filing the motion for reconsideration. The motion for reconsideration was a timely filed tolling motion under NRAP 4(a)(4). See AA Primo Builders v. Washington, 126 Nev. 578, 245 P.3d 1190 (2010) (a motion for reconsideration may be considered a tolling motion to alter or amend).

The tolling motion has not yet been resolved. A timely tolling motion tolls the 30- day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court enters a written order finally resolving the motion. See NRAP 4(a)(4). Further, "[t]his court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but... before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(4)."

NRAP 4(a)(6). Accordingly, we conclude this court lacks jurisdiction. The motion to dismiss is granted and we ORDER this appeal DISMISSED.1, J. Piaeu P Pickering 1TheHonorable Mark Gibbons, Senior Justice, participated in this SUPREME COURT matter under a general order of assignment. OF NEVADA (01 1947A 2 cc: Hon. Ronald J. Israel, District Judge Stephen E. Haberfeld, Settlement Judge Rodriguez Law Offices, P.C.

Christensen James & Martin Eighth District Court Clerk SUPREME COURT OF NEVADA (0) IR-17A 3