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Summary of Lytle v. Rosemere Estate Prop. Owners, 129 Nev. Adv. Op. 98

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CIVIL PROCEDURE

Summary

The Court determined two issues: (1) whether an NRCP 59(e) motion to alter or amend may be properly directed at a post-judgment order or whether that rule is limited to final judgments; and (2) whether NRAP 4(a)(4) tolling applied to the appellants' NRCP 59(e) motion.

Disposition

NRAP 4(a)(4) tolling applies to NRCP 59(e) motions to alter or amend that are directed at appealable special orders after final judgment.

Factual and Procedural History

In a dispute over unpaid homeowners' association (HOA) dues, the district court concluded that the HOA fees were proper and awarded the respondent the unpaid HOA fees and attorney fees. The appellants subsequently, but prematurely filed a notice of appeal before the district court entered its final judgment. However, the appeal was deemed timely and proper once the order was filed.²

At the same time, the respondent moved for and was awarded supplemental attorney fees for its counsel's additional services. The supplemental attorney fees award's notice of entry was served by mail on August 14, 2012. Appellants timely filed a NRCP 59(e) motion to alter or amend instead of a notice of appeal. After the district court denied the appellants' motion on January 16, 2013, appellants' filed a notice of appeal from the supplemental attorney fees award's notice of entry on January 30, 2013, clearly well beyond 30 days from the supplemental attorney fees award's notice of entry. The court subsequently issued an order to show cause whether the notice of appeal was timely filed because it was unclear whether appellants' NRCP 59(e) motion to alter or amend tolled the period for filing the notice of appeal.

Discussion

According to NRCP 59(a), a judgment includes "any order from which an appeal lies."³ Applying the definition that "judgment" includes any appealable order, a motion to alter or amend is permitted as to any appealable order, not just final judgments. As such, a motion to alter or amend any appealable order will generally toll the time to appeal

¹ By Allison Vitangeli

² Nev. R. App. P. 4(a)(6).

³ Nev. R. Civ. P. 59(a).

from that order. The district court's order awarding supplemental attorney fees qualifies as a special order after final judgment and is therefore an appealable order.⁴

Next, the Court went on to analyze the conclusions of various Circuit Courts of Appeal where they addressed the same issue under the similar federal rules of civil and appellate procedure.⁵ First, in *Autorama Corp. v. Stewart*, the Tenth Circuit held that the tolling provision under the federal counterpart to NRAP 4(a)(4) applied to the motion to alter or amend even though it was directed at a post-judgment order.⁶ Therefore, the time for filing the notice of appeal was tolled until the lower court resolved the motion.⁷ Additionally, the First and Second Circuit Courts have applied the definition of "judgment" provided in the federal counterpart of NRCP 54(a).⁸ The First and Second Circuit Courts held that the federal counterpart recognizes that "judgment" includes any appealable order, to determine that a motion to alter or amend could be directed at an appealable interlocutory order and therefore, as a result, the period for filing a notice of appeal was tolled in accordance with the federal counterpart to NRAP 4(a)(4).⁹

Conclusion

The court concluded that since appellant's NRCP 59(e) motion to alter or amend the post-judgment order awarding supplemental attorney fees falls under the definition provided in NRCP 54(a), it properly tolled the period for filing the notice of appeal under NRAP 4(a)(4). Therefore, the notice of appeal was timely filed and the appeal may proceed.

⁴ Nev. R. App. P. 3(A)(b)(8); *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006).

⁵ *See Mosley v. Eighth Jud. Dist. Ct.*, 124 Nev. 654, 662–63, 188 P.3d 1136, 1142 (2008) (recognizing that the Court may look to the interpretation of similar federal rules when construing a Nevada Rule of Civil Procedure).

⁶ 802 F.2d 1284, 1286–87 (10th Cir. 1986).

⁷ *Id.*

⁸ *See Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 6–8 (1st Cir. 2005); *See Lichtenberg v. Besicorp Grp. Inc.*, 204 F.3d 397, 400 (2^d Cir. 2000).

⁹ *Id.*