

IN THE SUPREME COURT OF THE STATE OF NEVADA

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APPELLATE COURT
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3 ANDREW FURER,

4 Appellant,

Supreme Court No. 51198

5 vs.

6 ELOISA FURER,

7 Respondent,
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11 MOTION FOR REMAND

12 The respondent respectfully moves the court for an order remanding this case
13 back to the Second Judicial District Court, Family Division, for the purpose of allowing
14 that court to properly adjudicate a timely filed Motion to Amend or Alter the Findings of
15 Fact and Judgment Pursuant to NRCP 52(b) and 59(e). This motion is based upon the
16 attached points and authorities and supporting exhibits.

17 Respectfully submitted,

18 *Robert W. Lueck*
19 ROBERT W. LUECK, ESQ.
20 Nevada Bar No. 1489
21 528 South Casino Center Drive, 3rd floor
22 Las Vegas, NV 89101
23 Attorney for Respondent
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(iv) a motion for a new trial under Rule 59.

(6) Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction. The supreme 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 judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(4). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

The Nevada Supreme Court has already ruled on this issue in Winston Products Company, Inc. v. Deboer, 122 Nev. Adv. Op. #48, 134 P.2d 726, 732 (2006) and Chapman Industries v. United Insurance Co., 110 Nev. 454 (1994). Although N.R.A.P. 4(a)(2) has been amended twice since 1994, the effect is still the same.

The appeal filed by Andrew Furer, although timely filed by his counsel, should not operate to preclude Eloisa from timely filing motions which effectively toll the time for filing an appeal. The rules of civil procedure and the rules of appellate procedure explicitly recognize that certain post judgment motions may be filed by the aggrieved party and that such motions do toll the time for filing an appeal.

Eloisa has a right to timely file such motions and a hasty Notice of Appeal from Andrew should not be permitted to cut off her civil procedure rights in this regard. If there were significant errors of law and/or fact that the District Court might correct by way of these motions, the District Court should be permitted to do so. That process would have the salutary effect of allowing (1) potential errors to be corrected at the trial court level or (2) permitting the trial court to make a better record in the event the case


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CERTIFICATE OF MAILING

I hereby certify that on the 7 day of March, 2008, a true and accurate copy of the Motion to Remand was deposited in the U.S. mail at Las Vegas, Nevada, first-class mail, postage thereon fully prepaid addressed as follows:

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Nancy Hazim
An employee of ROBERT W. LUECK, ESQ.