

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF MICHAEL DAVID ADAMS,  
BY AND THROUGH HIS MOTHER  
JUDITH ADAMS, INDIVIDUALLY AND  
ON BEHALF OF THE ESTATE,  
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE ROBERT W.  
LANE, DISTRICT JUDGE,

Respondents,

and

SUSAN FALLINI,

Real Party in Interest.

No. 66521

**FILED**

**OCT 09 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Youney  
DEPUTY CLERK

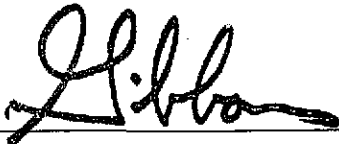
*ORDER TO SHOW CAUSE*

This original petition for extraordinary writ relief challenges a district court order granting real party in interest's NRCP 60(b) motion for relief from the judgment on fraud grounds. Our preliminary review of the writ petition and the appendix thereto reveals a potential problem with petitioner challenging this order through an original petition for writ relief. In particular, it appears that the challenged order is substantively appealable, *see* NRAP 3A(b)(8) (permitting an appeal from a special order entered after final judgment, except for an order "granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment"); *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 374 n.1, 90 P.3d 1283, 1284 n.1 (2004) (explaining that an order setting aside a default judgment is appealable as a special order after judgment if the motion to set aside is

made more than 60 days after entry of the judgment). Here, the motion in this case was filed more than six months after entry of the default judgment and, in granting the motion, the district court specifically rejected real party in interest's "excusable neglect" argument under NRCP 60(b)(1), noting that the motion was filed well beyond the six-month window for moving for relief under NRCP 60(b)(1). This court has held that the right to appeal is an adequate legal remedy precluding writ relief and that "writ relief is not available to correct an untimely notice of appeal." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224-25, 88 P.3d 840, 841 (2004). In this case, notice of entry of the order granting the motion to set aside the judgment was served by mail on August 13, 2014. Petitioner did not file a notice of appeal challenging that order within the 33-day appeal period. See NRAP 4(a)(1); NRAP 26(c). Instead, petitioner filed this petition for writ relief on September 17, 2014, which is 35 days after the challenged order's notice of entry was served.

Accordingly, petitioner shall have 15 days from the date of this order within which to show cause why this writ petition should not be summarily denied given that it appears to challenge a substantively appealable order. Real party in interest may file any reply within 11 days from the date that petitioner's response is served.

It is so ORDERED.

 \_\_\_\_\_, C.J.

cc: Robert W. Lane, District Judge  
Aldrich Law Firm, Ltd.  
Fabian & Clendenin, P.C. (Utah)  
John Ohlson  
Nye County Clerk