

**In the Supreme Court of Nevada**

MOTOR COACH INDUSTRIES, INC.,

Appellant,

*vs.*

A.K. and K.K., minors, by and through their guardian MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as executor of the ESTATE OF KAYVAN KHIABANI, M.D. (decedent); THE ESTATE OF KAYVAN KHIABANI, M.D. (decedent); SIAMAK BARIN, as executor of the ESTATE OF KATAYOUN BARIN, DDS (decedent); and the ESTATE OF KATAYOUN BARIN, DDS (decedent),

Respondents.

Electronically Filed  
Jan 28 2019 09:13 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONSE TO ORDER TO SHOW CAUSE**

In its order to show cause of September 6, 2018, the Court notes that this appeal is premature under NRAP(a)(4) because it was initiated after the timely filing of several post-judgment motions, which tolled the time to appeal under NRAP(a)(2). It is true that appellant Motor Coach Industries, Inc. (“MCI”) timely filed three tolling motions.<sup>1</sup>

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<sup>1</sup> Plaintiffs served written notice of entry of the judgment on April 18, 2018 via the district court’s e-filing system. On May 7, 2018, appellant filed a motion for new trial under NRCP 59(a), a renewed motion for judgment as a matter of law under NRCP 50(b), as well as a motion to alter or amend the judgment under NRCP 52(b) and NRCP 59(e).

Those motions were timely because the tenth judicial day following April 18, 2018 was Wednesday May 2, 2018, to which three extra days were added pursuant to NRCP 6(e) due to electronic service.

The district court has not yet entered orders resolving those motions, despite undersigned counsel's optimism that orders would have issued by now. Appellant, therefore, cannot dispute this Court's conclusion that the notice of appeal that it filed on May 18, 2018 as a precautionary measure is premature under NRAP 4(a)(4).

Appellant appreciates the indulgence of time this Court has granted to enable the potential resolution of jurisdictional hurdles before dismissing the premature appeal. *See* NRAP 4(a)(6) ("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."). MCI also appreciates this Court's assurance that the dismissal of this premature appeal is without prejudice to file a timely notice of appeal when

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*See Zhang v. Barnes*, 382 P.3d 878 (2016) (unpublished) (provision of three additional days under NRCP 6(e) for electronic service through the district court's e-service system applies to tolling motions). Then, because that third extra day fell on the non-judicial day of Saturday, May 5, 2018, the motions became due on Monday, May 7, 2018. *See* NRCP 6(a) ("The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day . . .").

appropriate. *See* Doc. 19-01824 (“Appellant may appeal from a final order.”).

Dated this 25th day of January, 2019.

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**CERTIFICATE OF SERVICE**

I certify that on January 25, 2019, I submitted the foregoing  
“Response to Order to Show Cause” for filing *via* the Court’s eFlex  
electronic filing system. Electronic notification will be sent to the  
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