

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD,  
Appellant,  
vs.  
NEVADA STATE PERSONNEL  
COMMISSION; STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION;  
LORNA WARD, APPEALS OFFICER;  
AND THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS, AS  
EMPLOYER,  
Respondents.

No. 79718

**FILED**

DEC 09 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING MOTION TO DISMISS*

This is a pro se appeal. The notice of appeal identifies the order challenged on appeal as a September 17, 2019, order denying motion for reconsideration. Respondent State of Nevada, Department of Corrections (NDOC) moves to dismiss this appeal for lack of jurisdiction. NDOC asserts that appellant appealed only from the order denying the motion for reconsideration, but an order denying motion for reconsideration is not independently appealable. NDOC also contends that the notice of appeal was untimely filed on September 23, 2019, more than 30 days after service of notice of entry of the order dismissing the petition on June 24, 2019. See NRAP 4(a)(1) (providing that a notice of appeal must be filed in the district court within 30 days after service of notice of entry of the appealed from order). Appellant has filed a pro se opposition and an amended notice of appeal identifying the June 24, 2019, order of dismissal as the order

challenged on appeal.<sup>1</sup> Having reviewed these documents, as well as NDOC's reply, this court denies the motion to dismiss.

NDOC is correct that an order denying a motion for reconsideration is not independently appealable. *Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007), *overruled on other grounds by AA Primo*, 126 Nev. 578, 245 P.3d 1190. However, it can be reasonably inferred from the original notice of appeal and case appeal statement that appellant intended to appeal from the underlying judgment, and it does not appear that NDOC was misled by the notice of appeal. Accordingly, the original notice of appeal is construed as challenging the June 24, 2019, order of dismissal.<sup>2</sup> *See Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995) (construing a notice of appeal from an order denying a motion for a new trial, to alter or amend the judgment, and for judgment notwithstanding the verdict as an appeal from both the underlying judgment and the order denying the motion for a new trial), *superseded by statute on other grounds as stated in RTTC Commc'ns v. Saratoga Flier*, 121 Nev. 34, 110 P.3d 24 (2005); *Lemmond v. State*, 114 Nev. 219, 954 P.2d 1179 (1998).

Appellant filed a timely motion for reconsideration of the order dismissing his petition on July 2, 2019, which tolled the time to file the notice of appeal. *See* NRAP 4(a)(4); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (describing when a post-judgment motion for reconsideration is afforded NRCPC 59(e) status and tolling effect

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<sup>1</sup>The amended notice of appeal is titled "Motion to File Amended Notice of Appeal."

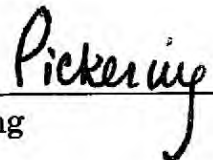
<sup>2</sup>This court may consider the arguments raised in the motion for reconsideration when deciding this appeal, if deemed appropriate. *See id.*

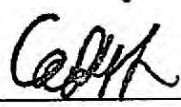
under NRAP 4(a)(4)(c)). Notice of entry of the order denying the motion for reconsideration was served on September 17, 2019, and appellant timely filed the notice of appeal in the district court on September 23, 2019. Thus, the notice of appeal is not untimely from the June 24, 2019, order.

In a footnote to the motion to dismiss, NDOC asks that this court modify the caption of the appeal to omit parties who were not parties to the district court proceedings. However, NDOC does not specify which parties it seeks to remove from the caption. This court declines to modify the caption of this appeal at this time. NDOC may file a formal motion to amend the caption, if deemed warranted. Any such motion must specify the parties NDOC seeks to remove from the caption.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Cadish

cc: Michael Whitfield  
Attorney General/Carson City  
Attorney General/Reno