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Dec 21 2020 02:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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13 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

14 VINCENT HESSER

15 Appellant

16 vs.

17 KENNEDY FUNDING, INC., A NEW
18 JERSEY CORPORATION

19 Respondent

) **Supreme Court Case No.: 81383**

) **District Court Case No.:**
) 09A582746

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) **APPELLANT'S RESPONSE TO**
) **ORDER TO SHOW CAUSE**

20 On or about November 6, 2020, the Court issued an Order Show Cause as to
21 why this Appeal should not be dismissed. The Court ordered Appellant to show how
22 the Court has jurisdiction in the above-referenced matter.

23 The Court should treat this appeal as an appeal of the district court's order
24 denying Appellant's motion to rule a judgment expired.¹ Appellant

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27 ¹ See Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 536, 516 P.2d
28 1234, 1236 (1973), overruled by Garvin v. Ninth Judicial Dist. Court ex rel. Cty. of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002):

1 incorrectly cited the NRAP 3A(a)(b)(1) as giving the Court Jurisdiction to hear
2
3 this matter. The correct authorizing rule is NRAP 3A(a)(8):

4 A special order entered after final judgment, excluding an order
5 granting a motion to set aside a default judgment under NRCP 60(b)(1)
6 when the motion was filed and served within 60 days after entry of the
7 default judgment.

8 Appellant contends that the Court's denial of the motion to declare the
9 judgment expired is a "special order." As a matter of fact, the Court appears to have
10 used that rule to review similar requests concerning renewals of judgment. See
11 McClandon v. Eighth Jud. Dist. Ct., 2016 WL 7031827 (Nov. 29, 2016 Nev.), and
12 Leven v. Frey, 123 Nev. 399, 166 P.3d 712 (2007). Since the district court's order
13 was an appealable order, Appellant's 59(e) motion properly tolled the deadline to
14 file a notice of appeal.
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16 Appellant's docketing statement also contains a scrivener's error. The
17 docketing statement states that the Notice of Appeal was filed on June 29, 2020. In
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21 The filing of a simple notice of appeal was intended to take the place of
22 more complicated procedures to obtain review and the notice should
23 not be used as a technical trap for the unwary draftsman. Jones v.
24 Chaney & James Construction Co., 399 F.2d 84 (5th Cir. 1968).
25 A defective notice of appeal should not warrant dismissal for want of
26 jurisdiction where the intention to appeal from a specific judgment may
27 be reasonably inferred from the text of the notice and where the defect
28 has not materially misled the appellee. Firchau v. Diamond Nat. Corp.,
345 F.2d 269 (9th Cir. 1965); Donovan v. Esso Shipping Co., 259 F.2d
65 (3rd Cir. 1958), cert. denied 359 U.S. 907, 79 S.Ct. 583, 3 L.Ed.2d
572(1958).

1 reality the notice of appeal was filed on June 19, 2020, twenty-nine (29) days after
2 service of the Notice of Entry of Order of the denial of the motion to amend or alter.

3 NRAP 4(4)(C) provides as follows:
4

5 **(4) Effect of Certain Motions on a Notice of Appeal.** If a party
6 timely files in the district court any of the following motions under the
7 Nevada Rules of Civil Procedure, the time to file a notice of appeal runs
8 for all parties from entry of an order disposing of the last such
9 remaining motion, and the notice of appeal must be filed no later than
10 30 days from the date of service of written notice of entry of that order:

- 11 (A) a motion for judgment under Rule 50(b);
- 12 (B) a motion under Rule 52(b) to amend or make additional
13 findings of fact;
- 14 (C) a motion under Rule 59 to alter or amend the judgment;
- 15 (D) a motion for a new trial under Rule 59.

16 Since the Appeal was filed within the thirty (30) day timeframe the Appeal is
17 timely and the Court has jurisdiction.
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CONCLUSION

The Appellant's appeal should be construed as an appeal of the district court's Order denying Appellant's motion to treat the judgment as expired. Appellant timely filed a motion to alter or amend the judgment/order. Since the judgment/order was an appealable judgment/order, the motion to amend or alter judgment tolled the deadline to file the notice of appeal of the order until thirty (30) days after service of the notice of entry of order denying the motion to alter or amend. The notice of entry of order denying the motion to amend or alter was served on May 21, 2020, the Notice of Appeal was filed on June 19, 2020. Thus, the Court has jurisdiction over Appellant's timely filed appeal.

Dated this 21st day of December 2020

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