IN THE COURT OF APPEALS OF IOWA

No. 1-659 / 10-1236
Filed October 5, 2011

LAIVEIL HARPER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

An applicant appeals from the district court's order denying his motion to reinstate his postconviction relief application. **APPEAL DISMISSED.**

Lori J. Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

VOGEL, P.J.

In 2004, Laiveil Harper was convicted of first-degree murder in violation of Iowa Code section 707.2 (2003) and willful injury in violation of Iowa Code section 708.4(1). Harper's convictions were affirmed on direct appeal. *State v. Harper*, No. 04-0347 (Iowa Ct. App. Mar. 31, 2005). In October 2005, Harper filed an application for postconviction relief. A hearing was held in May 2008, but Harper refused to leave his cell to participate in the hearing. His attorney testified he had "good contact" with Harper before the last hearing, but after that hearing Harper refused the attorney's visit at the prison, did not respond to the attorney's letters, and refused the attorney's phone calls. He further stated, "Based upon what the officer said, I believe that he doesn't want to continue with the petition." The district court found Harper had abandoned his claims and dismissed Harper's application for postconviction relief.[1]

In November 2009, Harper filed a pro se motion to reinstate his application for postconviction relief. On January 4, 2010, the district court found the case had been dismissed more than one year earlier and it was too late to reinstate the proceeding. Therefore, the court denied Harper's motion. *See* Iowa Rs. Civ. P. 1.1012 (providing that if a timely petition is filed and one of the five specified

[1] Harper filed multiple documents in this action, which continued after the dismissal. This included the following:

On September 3, 2008, Harper filed an amended application for postconviction relief.

On September 30, 2008, Harper filed a pro se motion to appoint a new defense lawyer and a hearing was held. On November 21, 2008, the court stated, "A review of this file demonstrates this case was dismissed by an order of the Court filed on May 22, 2008 . . . . As there are no proceedings pending in this case, the Court determines that the Applicant's Motion . . . is DENIED."

On January 4, 2010, Harper filed an unsigned copy of the amended application for postconviction relief that he had filed on September 3, 2008.

grounds is proven, a court may correct, vacate, or modify a final judgment or order); 1.1013 (providing that a timely petition under rule 1.1012 is one that is "filed and served in the original action within one year after the entry of the judgment or order involved").

Apparently unaware of the dismissal of Harper's November 2009 motion, a hearing was held on Harper's motion to reinstate the application on June 23, 2010. At the hearing, Harper argued that he did not leave his cell to attend the May 2008 hearing due to his mental condition at the time. He presented testimony from a psychologist, who stated it was "possible" Harper's mental health status affected his refusal to attend the prior hearing, but could not say it was "probable." The district court found there was "no direct evidence" regarding the reason why Harper refused to attend the May 2008 hearing and Harper did not demonstrate "good cause to set aside the dismissal entered May 22, 2008." Harper's motion was again denied.

Harper appeals. We must first determine whether we have jurisdiction over Harper's appeal. A final order was entered in May 2008, when the district court dismissed Harper's application. At this time, the district court ceased to have jurisdiction over the case, subject only to a timely post-judgment motion. *Snyder v. Allamakee County*, 402 N.W.2d 416, 418 (Iowa 1987) ("Because the default judgment entered against Berns was a final judgment, district court's power to proceed further was at an end, subject only to an appropriate and timely post-judgment motion properly filed.").

Harper did not file a post-judgment motion until more than a year later. We need not determine whether Harper's November 2009 motion was to set

aside a default or to vacate a judgment.[2] In either case, the motion was untimely. *See* Iowa Rs. App. P. 1.977 (providing a motion to set aside a default judgment must be filed within sixty days of the entry of a default judgment); 1.1013 (providing that a timely petition for vacating or modifying a judgment is one that is "filed and served in the original action within one year after the entry of the judgment or order involved"). Therefore, it was an untimely, invalid motion and the district court did not have jurisdiction to consider it. *State v. Olsen*, 794 N.W.2d 285, 287 (Iowa 2011) ("[A]bsent a valid post-judgment motion, a district court loses jurisdiction over a matter once a final judgment is rendered."); *Snyder v. Allamakee County*, 402 N.W.2d 416, 418 (Iowa 1987) ("If a judgment is final, not only is a right of appeal created, but, absent timely post-judgment motions, district court has no power or authority to return the parties to their original positions." (citations omitted)). Further, in January 2010, the district court correctly denied Harper's November 2009 motion based upon the fact it was untimely.

Moreover, an appeal must be taken within thirty days of a final ruling or within thirty days of a ruling on a timely-filed posttrial motion. *See* Iowa R. App. P. 6.101. The final order was entered in May 2008, and no appeal was taken. Harper's posttrial motion was untimely, and therefore any appeal taken from it was also untimely. "The timeliness of posttrial motions and appeal is a matter of

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[2] On appeal, Harper asserts the district court should have "set aside the default judgment/dismissal," arguing he demonstrated the ground of "unavoidable casualty or misfortune." *See* Iowa Rs. Civ. P. 1.977 (providing a court may set aside a default judgment for "mistake, inadvertence, surprise, excusable neglect or unavoidable casualty"); 1.1012(5) (providing a court may vacate or modify a final judgment on the ground of "unavoidable casualty or misfortune").

jurisdiction and is not subject to waiver in Iowa." *State ex rel. Miller v. Santa Rosa Sales & Mktg., Inc.*, 475 N.W.2d 210, 214 (Iowa 1991). We find that the district court did not have jurisdiction to entertain the merits of Harper's motion, either in January 2010 or in June 2010, and we consequently do not have jurisdiction over the appeal. We dismiss Harper's appeal.

APPEAL DISMISSED.