

No. DA 08-0063

IN THE SUPREME COURT OF THE STATE OF MONTANA

2008 MT 54

MOUNTAIN WEST BANK, N.A.,)
)
 Plaintiff and Appellee,)
)
 v.)
)
 WESTERN SKYS LTD. CO., TAMI ELLIS, DIRK ELLIS,)
 STRAWHOUSE MARKET, INC. and JOHN DOES)
 NOS. 1 THROUGH 10,)
)
 Defendants and Appellants,)
)
 WESTERN SKYS LTD., CO., TAMI ELLIS, DIRK ELLIS,)
 and STRAWHOUSE MARKET, INC.,)
)
 Counterclaimants and Appellants,)
)
 MOUNTAIN WEST BANK, N.A.,)
)
 Counterdefendant and Appellee.)

OPINION
AND
ORDER

FILED

FEB 13 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

¶1 Western Skys Ltd. Co., Tami Ellis, Dirk Ellis and Strawhouse Market, Inc., through their counsel, have petitioned the Court to file an out of time appeal as provided by M. R. App. P. 4(6).

¶2 Counsel cites as the reason that the appeal was not timely filed is that the notice of appeal was mistakenly sent to the Clerk of the District Court in Lewis & Clark County, rather than to the office of the Clerk of this Court as is required by M. R. App. P. 4(2)(a). When counsel discovered the error after being contacted by the Lewis & Clark County Clerk of the District Court and the Clerk of this Court, the time within to file an appeal had expired.


¶3 M. R. App. P. 4(6) provides that an out of time appeal will only be allowed in the infrequent harsh case under extraordinary circumstances amounting to a gross miscarriage of justice, and that extraordinary circumstances do not include mere mistake, inadvertence or excusable neglect.

¶4 We conclude that the petition does not meet the requirements of M. R. App. P. 4(6).

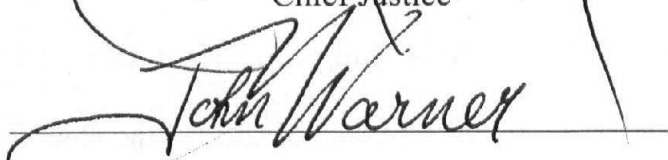
¶5 NOW, THEREFORE, IT IS ORDERED that the petition to file an out of time appeal must be, and is hereby, DENIED.

¶6 IT IS FURTHER ORDERED that the Clerk of this Court shall mail a copy of this Order to all counsel of record.


DATED this 13th day of February 2008.



Chief Justice



John Warner



Patricia Cotto

Justices