

IN THE UTAH COURT OF APPEALS

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Brian K. Stack,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20080260-CA
v.	)	
	)	F I L E D
Kent W. Jones,	)	(June 26, 2008)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 253</span>

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Third District, Salt Lake Department, 070916606  
The Honorable Robert K. Hilder

Attorneys: Brian K. Stack, Draper, Appellant Pro Se  
Mark L. Shurtleff and Brent A. Burnett, Salt Lake  
City, for Appellee

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Brian K. Stack appeals the dismissal of his action for removal of Kent W. Jones. This is before the court on its own motion for summary disposition based on lack of jurisdiction due to an untimely notice of appeal.

Generally, a notice of appeal must be filed within thirty days from the date of the final order appealed. See Utah R. App. P. 4(a). A timely filed motion pursuant to rule 59 of the Utah Rules of Civil Procedure will toll the time for appeal. See Utah R. App. P. 4(b). However, an untimely rule 59 motion will have no effect on the time for appeal. See id.; Blauer v. Department of Workforce Servs., 2007 UT App 280, ¶ 10, 167 P.3d 1102.

A rule 59 motion must be served no later than ten days after the entry of the judgment. See Utah R. Civ. P. 59(b). Stack's rule 59 motion was not served within ten days but was filed twenty-two days after the entry of judgment. Thus, the motion was untimely. Accordingly, the motion did not toll the time for filing an appeal from the entry of the order dismissing the action. See Blauer, 2007 UT App 280, ¶ 10.

Because the rule 59 motion did not toll the time for appeal, Stack's notice of appeal was due within thirty days from the entry of the order dismissing his action. Stack filed his notice of appeal more than thirty days after the entry of the final order in this case. Therefore, his notice of appeal was untimely. As a result, this court lacks jurisdiction over the appeal and must dismiss it. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649.

Dismissed.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge