

IN THE UTAH COURT OF APPEALS

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<u>Dean Wall</u> , Shirley Secrist,)	MEMORANDUM DECISION
Michele Wall, and Jason Wall,)	(Not For Official Publication)
)	
Plaintiffs and Appellant,)	Case No. 20050987-CA
)	
v.)	F I L E D
)	(December 22, 2005)
Wells Fargo Bank,)	
)	
Defendant and Appellee.)	2005 UT App 556

Second District, Farmington Department, 040700059
The Honorable Michael G. Allphin

Attorneys: Dean Wall, Layton, Appellant Pro Se
Gregory S. Roberts, Salt Lake City, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Dean Wall seeks to appeal from the trial court's order setting aside a default certificate entered against Wells Fargo Bank (Wells Fargo). This is before the court on its own motion for summary disposition based on lack of jurisdiction. Wells Fargo responded to the motion. Wall did not.

The final order of the trial court in this case was entered on February 8, 2005, denying Wall's motion to set aside summary judgment in favor of Wells Fargo. Wall filed the current notice of appeal in October 2005. A notice of appeal must be filed within thirty days after the order or judgment appealed from. See Utah R. App. P. 4(a). The thirty-day period is jurisdictional. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. If an appeal is not timely filed, this court lacks jurisdiction and must dismiss the appeal. See id.

Wall filed his notice of appeal well beyond the thirty-day period from the entry of the trial court's final order. As a result, this appeal is untimely and this court lacks jurisdiction over it.

Wells Fargo requests its attorney fees on appeal as a sanction for filing a frivolous appeal pursuant to rule 33 of the Utah Rules of Appellate Procedure. See Utah R. App. P. 33(a). A frivolous appeal is one "without reasonable legal or factual basis." Maughan v. Maughan, 770 P.2d 156, 162 (Utah Ct. App. 1989). Based on the earlier appeal filed by Wall, which was also dismissed for lack of jurisdiction due to the untimely filing of the notice of appeal, we agree that this appeal is frivolous. Wells Fargo is awarded \$250.00 in attorney fees incurred in resisting this appeal.

Appeal dismissed.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge