

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

KEVIN RHODY,

Appellant,

v.

Case No. 5D21-171

VEECO INSTRUMENTS, INC.,

Appellee.

_____ /

Opinion filed March 5, 2021

Appeal from the County Court
for Osceola County,
Gabrielle Sanders, Judge.

Justin R. Infurna, of The Infurna Law Firm,
P.A., Orlando, for Appellant.

Kevin Rhody, Celebration, pro se.

Michael R. D'Lugo, of Wicker Smith O'Hare
McCoy & Ford, P.A., Orlando, for Appellee.

PER CURIAM.

Kevin Rhody appeals the trial court's order denying his motion to set aside a default final judgment. Our review of the record leads us to conclude that Rhody has not timely invoked appellate jurisdiction.¹

¹ Although the jurisdictional issue discussed in this opinion was not raised by either party, "[c]ourts are bound to take notice of the limits of their authority and if want of

Orders entered on motions for relief from or to set aside final judgments are reviewable under Florida Rule of Appellate Procedure 9.130(a)(5). To timely invoke the jurisdiction of the appellate court under this rule, a notice of appeal, accompanied by any filing fees prescribed by law, must be filed with the clerk of the lower tribunal within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.130(b). The failure to do so results in a lack of jurisdiction that cannot be remedied. *See Helmich v. Wells Fargo Bank, N.A.*, 136 So. 3d 763, 764 (Fla. 1st DCA 2014) (recognizing that the requirement of the filing of a notice of appeal within thirty days is “jurisdictional and irremediable” (citing *Sims v. State*, 998 So. 2d 494, 509–11 (Fla. 2008))).

Here, the order under review was rendered on June 19, 2019. Rhody moved for rehearing of this order; and, on July 22, 2019, the trial court rendered its order denying the rehearing motion. Rhody filed his notice of appeal on August 21, 2019.

Rhody’s notice of appeal in this case is untimely because, under rule 9.130(a)(5), the aforementioned motion for rehearing of the June 19, 2019 order denying his motion to set aside the default final judgment did not toll the time for the filing of his notice of appeal. *See Helmich*, 136 So. 3d at 764 (“It is also clear that a party’s motion for rehearing/reconsideration directed at denial of relief from judgment is unauthorized and will not toll the unwavering thirty-day time limit. Fla. R. App. P. 9.130(a)(5). This is true

jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.” *Polk Cnty. v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997) (alteration in original) (quoting *West 132 Feet v. City of Orlando*, 86 So. 197, 198–99 (Fla. 1920)); *see also Gant v. Nat’l Linen*, 999 So. 2d 1079, 1080 (Fla. 1st DCA 2009) (“A court’s lack of jurisdiction is an issue it may notice sua sponte.”).

even where the court takes up an unauthorized motion for rehearing.” (citation omitted)).² Therefore, the last day for Rhody to have timely filed his notice of appeal of the subject order was July 19, 2019, as this date remained unaffected by the filing of his motion for rehearing.

Accordingly, as Rhody’s notice of appeal, filed on August 21, 2019, was well past the filing deadline, his appeal is dismissed as untimely.

APPEAL DISMISSED.

COHEN, LAMBERT, and EDWARDS, JJ., concur.

² The applicable version of rule 9.130(a)(5) when Rhody filed his motion for rehearing provided that “[m]otions for rehearing directed to these orders will not toll the time for filing a notice of appeal.” The rule now explicitly states that “[m]otions for rehearing directed to these orders are not authorized under these rules and therefore will not toll the time for filing a notice of appeal.” See *In re Amends. to Fla. Rules of App. Proc.—2020 Regular-Cycle Report*, No. SC20-216, 2020 WL 8225247, at *11 (Fla. Oct. 29, 2020).