

IN THE UTAH COURT OF APPEALS

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Kirt Ashton; Clair Bennett;)	MEMORANDUM DECISION
Bradley Mitchell; Todd)	(Not For Official Publication)
Nielsen; Brian Pratt; and Paul)	
Radvin;)	Case No. 20090293-CA
)	
Plaintiffs and Appellees,)	F I L E D
)	(June 25, 2009)
v.)	
)	2009 UT App 172
Learnframe, Inc.; Michael)	
Memmott, Sr.; Ralph Mason;)	
Gary Tobian; and Lee Price,)	
)	
Defendants.)	
_____)	
)	
American Pension Services,)	
Inc.,)	
)	
Third-Party Claimant and)	
Appellant.)	

Third District, West Jordan Department, 020414271
The Honorable Michele M. Christiansen

Attorneys: Timothy M. Willardson, Salt Lake City, for Appellant
Erik A. Olson, Thomas J. Burns, and Jason R. Hull,
Salt Lake City, for Appellees

Before Judges Greenwood, Thorne, and Davis.

PER CURIAM:

American Pension Services, Inc., a third-party claimant in the above action, seeks to appeal two post judgment orders entered by the district court. This matter is before the court on Appellees' (collectively the Employees) motion for summary disposition.

American Pension Services presents three issues for review: (1) "[t]he district court has no jurisdiction due to the failure of the plaintiff to bring the appellants into the action"; (2) "[t]he district court deprived appellant of its due process

rights by failing to provide sufficient time and opportunity for discovery and motion practice"; and (3) "[t]he district court deprived appellant of its due process rights by entering a bond that had been withdrawn." This court does not have jurisdiction to review any of the issues raised by American Pension Services.

This court previously dealt with the first two issues raised by American Pension Services in its first appeal to this court, which was dismissed for lack of jurisdiction. See Ashton v. Learnframe, Inc. (Ashton I), 2008 UT App 172, ¶¶ 5, 12, 185 P.3d 1135. Specifically, this court determined that because American Pension Services had failed to take any step to establish jurisdiction in an appellate court, i.e., by filing a motion to intervene or seeking an extraordinary writ, this court did not have jurisdiction to resolve the issues asserted in the appeal. See id. American Pension Services has failed to cite to any portion of the record, nor did this court discover any, that indicates American Pension Services has taken any steps to establish jurisdiction in an appellate court. Accordingly, for the same reasons we concluded we did not have jurisdiction in Ashton I, we do not have jurisdiction to resolve the first two issues asserted by American Pension Services in this appeal.

Similarly, we have no jurisdiction to resolve American Pension Services' final issue concerning whether the district court erred in denying a motion to withdraw a bond. Even if we were to assume, in regard to this last issue, that American Pension Services could overcome the fact that it had not previously taken any step to establish jurisdiction in an appellate court, this court would still not have jurisdiction to resolve the issue because the notice of appeal was not timely filed. A notice of appeal must be filed "with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Utah R. App. P. 4(a). If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal and must dismiss. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616. The post judgment order concerning the bond was entered on May 16, 2008. The issue concerning the bond was collateral to the final judgment and was final on the date it was entered. See Cheves v. Williams, 1999 UT 86, ¶ 50, 993 P.2d 191. American Pension Services did not seek to appeal this decision until almost one year after it was entered. Because American Pension Services did not timely file its notice of appeal, this court lacks jurisdiction and must dismiss. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989) (stating that if the court lacks

jurisdiction over an appeal, it has only the authority to dismiss the action).¹

The appeal is dismissed.²

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

James Z. Davis, Judge

¹Further, American Pension Services lacks standing to even raise the bond issue because the bond was posted by Curtis DeYoung, not American Pension Services. See Sierra Club v. Sevier Power Co., 2006 UT 74, ¶ 11, 148 P.3d 960 (stating that to have standing a person must demonstrate that they suffered a distinct and palpable injury or the party can demonstrate it is a proper party to assert a matter of great public importance).

²The Employees seek attorney fees pursuant to rule 33 of the Utah Rules of Appellate Procedure. However, as we explained in Ashton I, "[b]ecause we lack jurisdiction, we may not address the Employees' request for attorney fees on appeal." Ashton v. Learnframe, Inc., 2008 UT App 172, ¶ 12 n.3, 185 P.3d 1135.