IN THE UTAH COURT OF APPEALS

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Marjean A. Deakin, Plaintiff and Appellee, v. Bernard Gomez and Ramona Gomez, Defendants and Appellants.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050953-CA F I L E D (January 19, 2007) 2007 UT App 14

Third District, Salt Lake Department, 050910468
The Honorable John Paul Kennedy

Attorneys: James H. Deans, Salt Lake City, for Appellants
Christian W. Clinger, Salt Lake City, for Appellee

Before Judges Billings, McHugh, and Thorne.

THORNE, Judge:

Bernard and Ramona Gomez appeal from the judgment of the district court quieting title to real property in appellee Marjean A. Deakin. We dismiss the Gomezes' appeal based on lack of jurisdiction.

Under the Utah Rules of Appellate Procedure, a party seeking to appeal a final order or judgment must file a notice of appeal within thirty days from the date that the order or judgment appealed from is entered. See Utah R. App. P. 3(a), 4(a). "If an appeal is not timely filed, this court has no jurisdiction to consider the appeal." In re J.J.L., 2005 UT App 322,¶6, 119 P.3d 315; see also Serrato v. Utah Transit Auth., 2000 UT App 299,¶7, 13 P.3d 616. "This court may raise jurisdiction sua sponte at any time." Harris v. IES Assocs., Inc., 2003 UT App 112,¶56, 69 P.3d 297.[1]

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[1]Ordinarily, this court attempts to identify and resolve jurisdictional defects prior to subjecting the parties to the expense of briefing and oral argument. In this matter, the defect did not become apparent until after briefing and argument

(continued...)

In this matter, the district court entered an order quieting title in Deakin on June 3, 2005. On July 6, the court signed a minute entry awarding costs to Deakin, and on July 27, the court signed a separate order and judgment of costs. In the meantime, on July 20, Deakin had filed a "Rule 54 Request" seeking to certify the June 3 order as a "final judgment and order," presumably for the purpose of establishing that the Gomezes' right of appeal had expired. The Gomezes opposed Deakin's request on July 26, arguing that no order on Deakin's costs had issued. The Gomezes specifically argued that the cost order, when issued, should be deemed the final order in the case. As noted above, the court signed the cost order and judgment the next day, July 27. On September 13, the court issued an order in response to Deakin's rule 54 request, certifying that the July 27 order was indeed the final order in the case. The Gomezes filed their notice of appeal on October 11.

Assuming, without deciding, that the district court correctly identified the July 27 order as the final order in this case,[2] the Gomezes' October 11 notice of appeal was untimely. Although the Gomezes filed their appeal notice within thirty days of the district court's September 13 certification order, that order is irrelevant to determining the notice period because a rule 54 motion is not one of the enumerated motions that will toll the running of the notice period under appellate rule 4. See Utah R. App. P. 4(b). Nor did the Gomezes seek an extension of time to appeal in the trial court. See id. 4(e). Under these circumstances, the Gomezes' notice of appeal is untimely and insufficient to vest this court with jurisdiction to hear the appeal.

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[1](...continued)
had been completed.

[2]"The Utah Supreme Court has recognized that an order is final where 'the effect of the order . . . was to determine substantial rights . . . and to terminate finally the litigation,' or where 'it [is] unlikely that any subsequent judgment would be entered from which an appeal could be taken.'" Harris v. IES Assocs., Inc., 2003 UT App 112,¶56, 69 P.3d 297 (alteration and omissions in original) (citations omitted). Thus, depending on the circumstances surrounding the costs issue, the June 3 order might properly be deemed the final order in this matter. We need not decide which of the two orders is the final order, as the Gomezes' notice of appeal is untimely in either scenario.

When this court determines it lacks jurisdiction, it retains only the authority to dismiss the action. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Accordingly, we dismiss the Gomezes' appeal.

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William A. Thorne Jr., Judge

WE CONCUR:

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge