

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050773-CA
v.	)	
	)	F I L E D
Dwight Scott Ellifritz,	)	(November 3, 2005)
	)	
Defendant and Appellant.	)	<div style="border: 1px solid black; padding: 2px;">2005 UT App 474</div>

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Eighth District, Vernal Department, 026800374  
The Honorable A. Lynn Payne

Attorneys: Dwight Scott Ellifritz, Gunnison, Appellant Pro Se  
Mark L. Shurtleff and Sandra Langley, Salt Lake City,  
for Appellee

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Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Dwight Scott Ellifritz appeals from the district court's Notice of Entry of Order Recalling Bench Warrant. This matter is before the court on the State of Utah's motion for summary disposition based on lack of jurisdiction.

In March 2002, the State of Wyoming entered a judgment and order of support requiring Ellifritz to pay \$88.00 per month in child support. Later that year, the clerk of the Eighth Judicial District of Utah issued a Notice of Registration of Foreign Support Order. In 2005, the State filed a motion for order to show cause, alleging that Ellifritz failed to pay child support. The district court held a hearing on the Order to Show Cause in June 2005. Ellifritz did not appear at the hearing. The district court found Ellifritz to be in contempt and issued an Authorization for a Bench Warrant for his failure to appear. Based upon the Order to Show Cause hearing, the district court entered Findings, Conclusions, Order and Judgment on July 6, 2005. A bench warrant was also issued, but eventually recalled when the court learned that Ellifritz was incarcerated at the time of the hearing. A Notice of Entry of Order Recalling Bench

Warrant was entered on August 9, 2005. Ellifritz appeals from this notice.<sup>1</sup>

Unless certain exceptions apply, this court does not have jurisdiction over an appeal unless it is taken from a final judgment. See Utah R. App. P. 3(a); see also Loffredo v. Holt, 2001 UT 97, ¶10, 37 P.3d 1070. To constitute a final judgment, an order "must end the claim and controversy between the litigants." Id. at ¶12. The Notice of Entry of Order Recalling Bench Warrant is not a final order that resolves the controversy between the parties. Accordingly, this court does not have jurisdiction over the appeal.

To the extent that Ellifritz attempts to appeal from the July 6, 2005 Findings, Conclusions, Order and Judgment, we also lack jurisdiction to consider the appeal. 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. Ellifritz did not file a notice of appeal until September 7, 2005. Accordingly, to the extent Ellifritz appeals the district court's July 6, 2005 Order, his notice of appeal was untimely.

Therefore, Ellifritz's appeal is dismissed.

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Judith M. Billings,  
Presiding Judge

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge

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<sup>1</sup>Ellifritz filed a "petition for review" with the district court, which was construed as a notice of appeal. While Ellifritz has not filed a docketing statement, his "petition for review" sufficiently identifies the issues to allow this court to resolve his appeal.