

IN THE UTAH COURT OF APPEALS

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Jeffery G. Fuell,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090382-CA
v.)	
)	F I L E D
Lorencita J. Diel (Fuell),)	(December 31, 2009)
)	
Respondent and Appellee.)	2009 UT App 401

Third District, Tooele Department, 034300398
The Honorable Stephen L. Henriod

Attorneys: Vernon C. Jolley and Alexander D. Jolley, Sandy, for
Appellant
Gary Buhler, Grantsville, for Appellee

Before Judges Bench, Orme, and McHugh.

PER CURIAM:

Jeffery G. Fuell appeals the district court's order modifying the parties' divorce decree. We dismiss the appeal because this court lacks jurisdiction.

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 district court entered its final judgment and order on March 30, 2009. Accordingly, the notice of appeal needed to be filed on or before April 29, 2009. See Utah R. App. P. 4(a). Mr. Fuell filed a notice of appeal with the district court on May 6, 2009.¹ Because Mr. Fuell did not timely file his notice of

¹It appears from examining the notice of appeal that Mr. Fuell mistakenly attempted to file it with the district court in Salt Lake City on April 29, 2009. The notice of appeal was not
(continued...)

appeal, this court lacks jurisdiction to hear the appeal and must dismiss. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

The appeal is dismissed.²

Russell W. Bench, Judge

Carolyn B. McHugh, Judge

I CONCUR IN THE RESULT:

Gregory K. Orme, Judge

¹(...continued)
filed with the district court in Tooele until May 6, 2009. The timeliness of the filing of the notice of appeal is determined using the date the notice of appeal was filed in the correct court. See In re M.S., 781 P.2d 1287, 1288-89 (Utah Ct. App. 1989) (assessing the timeliness of a notice of appeal based on the date the notice was filed with the correct court rather than the date that the notice was, "through mistake or inadvertence, incorrectly filed with [another court]"). Further, because the notice of appeal was rejected by the Salt Lake district court as an improper filing in that department, Mr. Fuell cannot argue that the filing should be construed as valid and timely. Cf. Raiser v. Buirley, 2002 UT App 277, ¶ 8, 54 P.3d 650 (concluding that if a district court properly rejects a notice of appeal because it is not accompanied with a filing fee, then the notice of appeal is not valid until filed and accepted by the district court).

²Lorencita J. Diel seeks attorney fees related to defending this appeal under rule 33 of the Utah Rules of Appellate Procedure. Ms. Diel's request for attorney fees is denied. However, Ms. Diel is entitled to the costs she incurred in this appeal. See Utah R. App. P. 34.