

IN THE UTAH COURT OF APPEALS

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Haven Pointe Apartments,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20090452-CA
v.	)	
	)	
Edward A. Morales,	)	F I L E D
	)	(October 29, 2009)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2009 UT App 309</span>

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Second District, Ogden Department, 080904011  
The Honorable Pamela G. Heffernan

Attorneys: Edward A. Morales, Sedona, Arizona, Appellant Pro Se  
Kirk A. Cullimore and Derek J. Barclay, Sandy, for  
Appellee

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Before Judges Orme, Thorne, and McHugh.

PER CURIAM:

This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the failure to file a timely notice of appeal or alternatively that the issues presented are so insubstantial as to not merit further proceedings.

Utah Code section 78B-6-813 requires a notice of appeal from a judgment in a statutory forcible entry and detainer action to be filed within ten days after entry of the judgment. See Utah Code Ann. § 78B-6-813(1) (2008); see also Utah R. App. P. 4(a) ("[W]hen a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal . . . shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from."). Further, rule 59 of the Utah Rules of Civil Procedure requires a motion to amend the judgment to be filed within ten days after entry of the judgment. See Utah R. Civ. P. 59(e). If such motion is not timely filed, then the period for filing a notice of appeal is not extended. See Utah R. App. P. 4(b)(1) (stating that time to file a notice of appeal runs from the order resolving certain listed motions only if the motion was timely filed); Burgers v. Maiben, 652 P.2d 1320, 1322 (Utah 1982) (per curiam) ("Because the defendant failed to serve his motion for a new trial on the plaintiffs within 10 days from the date the

trial court's final judgment was entered, the time for filing a notice of appeal with this court continued to run.").

Haven Pointe Apartments filed an action against Edward A. Morales under the forcible entry and detainer statutes. See Utah Code Ann. §§ 78B-6-801 to -816 (2008). On December 24, 2008, the district court entered an order granting Haven Pointe's motion for summary judgment. On January 2, 2009, the district court entered a judgment against Morales for \$3991.<sup>1</sup> On January 29, 2009, Morales filed both a motion to amend the judgment under rule 59 of the Utah Rules of Civil Procedure and a notice of appeal. Morales did not file either his notice of appeal or his motion to amend within ten days of the judgment. Therefore, each such filing was untimely. Further, to the extent the district court's ruling on Morales's motion to amend may have been independently appealable, Morales's second notice of appeal was also untimely. On April 28, 2009, the district court entered an order denying Morales's motion to amend the judgment. Morales filed a second notice of appeal on May 18, 2009. Because this action was for unlawful detainer, the notice of appeal needed to be filed within ten days of the ruling on the motion. Morales's notice of appeal was untimely filed. Because the notice of appeal was untimely, we lack jurisdiction to consider the merits of the appeal and have no choice but to dismiss it. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616.

Accordingly, we dismiss the appeal for lack of jurisdiction.

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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Carolyn B. McHugh, Judge

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<sup>1</sup>A notation in the district court's docket also indicates that the same judgment was entered on January 8, 2009. However, no separate document exists in the file that would demonstrate that this was a new document. In this case, the distinction makes no difference because Morales did not timely file his notice of appeal or his motion under rule 59 of the Utah Rules of Civil Procedure from either date.