

IN THE UTAH COURT OF APPEALS

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John Henderson,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner, Appellant,)		
and Cross-appellee,)	Case No. 20070667-CA	
)		
v.)	F I L E D	
)	(December 20, 2007)	
Joanna Henderson,)		
)	<table border="1"><tr><td>2007 UT App 405</td></tr></table>	2007 UT App 405
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Respondent, Appellee, and)		
Cross-appellant.)		

Second District, Farmington Department, 064700169
The Honorable Rodney S. Page

Attorneys: Larry B. Larsen, Salt Lake City, for Appellant and
 Cross-appellee
 Don S. Redd, Layton, for Appellee and Cross-appellant

Before Judges Bench, Greenwood, and Billings.

PER CURIAM:

John Henderson (Husband) appeals from a divorce decree. Joanna Henderson (Wife) filed a cross-appeal. The cross-appeal is before the court on its own motion for summary disposition based on lack of jurisdiction due to an untimely filed notice of cross-appeal.

Husband filed his notice of appeal on August 15, 2007, twenty-nine days after the entry of the July 17 order appealed. Wife filed her notice of cross-appeal along with a motion for extension in the trial court on October 1, 2007. Because Wife's motion for extension, and with it her notice of cross-appeal, were untimely filed, this court must dismiss the cross-appeal.

Under rule 4(d) of the Utah Rules of Appellate Procedure, a notice of cross-appeal must be filed "within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of [rule 4], whichever period last expires." Utah R. App. P. 4(d). The referenced "time otherwise prescribed" is, generally, thirty days from the entry of the order appealed. See Utah R. App. P. 4(a),

(b). Here, Husband's notice of appeal was filed twenty-nine days after the entry of the order appealed. Therefore, the additional fourteen days to file a cross-appeal would expire later than the initial thirty-day period. Accordingly, Wife's notice of cross-appeal was due no later than August 29, fourteen days after Husband filed his notice of appeal.

Wife clearly filed her notice after August 29, but she concurrently filed a motion for an extension of the time to file her cross-appeal. A trial court may extend the time to file an appeal "upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of [rule 4]." Utah R. App. P. 4(e). Accordingly, to be timely under rule 4(e), Wife must have filed her motion to extend the time to appeal no later than September 17, 2007. Wife did not file her motion for an extension until October 1. As a result, her motion for extension was untimely and the trial court had no authority to grant an extension. See Utah R. App. P. 2 (providing that the time frames in rule 4 cannot be suspended).

Accordingly, Wife's cross-appeal was untimely filed. "Failure to file a timely notice of appeal deprives this court of jurisdiction over the appeal." Reisbeck v. HCA Health Servs., 2000 UT 48, ¶ 5, 2 P.3d 447. Because this court lacks jurisdiction over the cross-appeal, we must dismiss it.

Dismissed.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge