

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Orem City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20100382-CA
v.)	
)	F I L E D
Nicholas D. Hess,)	(July 1, 2010)
)	
Defendant and Appellant.)	2010 UT App 181

Fourth District, Orem Department, 051200172
The Honorable John C. Backlund

Attorneys: Nicholas D. Hess, Provo, Appellant Pro Se

Before Judges Davis, McHugh, and Roth.

PER CURIAM:

Nicholas D. Hess filed a notice of appeal in his criminal case on October 6, 2009.¹ This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction due to Hess's failure to file a timely notice of appeal. See Utah R. App. P. 4(a).

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." Id. 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 order on October 2, 2007. Hess filed a notice of appeal on October 6, 2009, approximately two years after the district court entered its final order. Hess's attempt to seek a direct appeal in this court two years after the final order was entered is untimely.

¹It appears that the district court delayed forwarding the notice of appeal to this court because the record had been destroyed according to the district court's case retention schedule.

Because Hess did not timely file his notice of 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) (stating that if the court lacks jurisdiction over an appeal, it has only the authority to dismiss the action).

The appeal is dismissed.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Stephen L. Roth, Judge