

IN THE UTAH COURT OF APPEALS

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Jamis M. Johnson; DaNell)	MEMORANDUM DECISION
Johnson; and D.M. Johnson &)	(Not For Official Publication)
Associates, LLC,)	
)	Case No. 20080828-CA
Plaintiffs and Appellants,)	
)	
v.)	F I L E D
)	(January 8, 2009)
)	
Elizabeth R. Loveridge;)	2009 UT App 7
and the Law Firm of)	
Woodbury & Kesler, PC,)	
)	
Defendants and Appellees.)	

Third District, Salt Lake Department, 060915939
The Honorable Joseph C. Fratto, Jr.

Attorneys: Joseph R. Goodman, Jr., Salt Lake City, for
Appellants DaNell Johnson and D.M. Johnson &
Associates, LLC
Jamis M. Johnson, Salt Lake City, Appellant Pro Se
David R. Williams and David A. Nill, Salt Lake City,
for Appellees

Before Judges Thorne, Bench, and McHugh.

PER CURIAM:

Jamis M. Johnson, DaNell Johnson, and D.M. Johnson & Associates, LLC (collectively the Johnsons) appeal the district court's August 27, 2008 memorandum decision dismissing their case. This matter is before the court on its own motion for summary disposition on the ground that the notice of appeal was not timely filed.

The Johnsons filed their notice of appeal on October 1, 2008. Pursuant to rule 4(a) of the Utah Rules of Appellate Procedure, a notice of appeal must be filed within thirty days of the entry of the final order or judgment appealed. See Utah R. App. P. 4(a). If an appeal is not timely filed, this court lacks jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616. If the court lacks jurisdiction, it has only the authority to dismiss the appeal.

See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

The Johnsons' notice of appeal was filed more than thirty days after the entry of the final order dismissing their case, and is thus, untimely. Mr. Johnson asserts that, pursuant to rule 4(e) of the Utah Rules of Appellate Procedure, this court may excuse the untimely notice of appeal based on his claim of excusable neglect. However, rule 4(e) provides that the district court "upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty days after the expiration of the time prescribed in paragraphs (a) and (b) of this rule." Utah R. App. P. 4(e).

The district court docket demonstrates that Mr. Johnson did not file a motion for extension of time to appeal in the district court as required by rule 4(e). Thus, because the notice of appeal was not timely filed, this court has only the authority to dismiss this appeal. See Varian-Eimac, Inc., 767 P.2d at 570.¹

Accordingly, the appeal is dismissed.

William A. Thorne, Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Carolyn B. McHugh, Judge

¹Mr. Johnson makes additional arguments as to why this court should excuse the untimely notice of appeal. However, Mr. Johnson was required to timely set forth his arguments in an appropriate motion for extension of time to appeal filed pursuant to rule 4(e) of the Utah Rules of Appellate Procedure.